

Yakima, Washington, Monday, March 17, 1947
10 o'Clock A.M.

(All parties present as before, and the trial was resumed.)

Mr. Holman: May it please the Court, this morning again I received an additional telegram from Mr. King, the witness that I had subpoenaed, and at one time I had arranged to have his testimony on Thursday, on account of his physical condition, and he left Wednesday evening. He arranged to be back here Sunday evening, last evening, to be present in court this morning. He says "Because of physical condition I regret it is not advisable for me to come to Yakima at this time"; and I would therefore respectfully make application, in the event I am unable to have him clear with his doctor so he could be here, that we could take his testimony before you in Spokane, if it would be possible. I'm just disappointed, that's twice I've been disappointed, and still I do know the man's arm is in bad shape.

The Court: Where does he live?

Mr. Holman: Cheney, your Honor.

The Court: What will he testify to here?

Mr. Holman: May I have just a minute, your Honor, [1900] to find that?

The Court: Yes. Where was he subpoenaed, Mr. Holman?

Mr. Holman: He was subpoenaed in Cheney.

The Court: Too far to compel him to attend, is that true?

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Mr. Holman: Wait just a minute, your Honor. He was subpoenaed here; he was in the courtroom here. I am sure the Marshal subpoenaed only Mr. Black away from here, your Honor.

The Court: Let me see his telegram. He hasn't any doctor's certificate attached to it, or anything of that sort.

Mr. Holman: Oh, no. I read one before to your Honor.

The Court: Well, obviously his testimony couldn't be taken before me in Spokane without continuing this case until some future date; that would involve a continuance.

Mr. Holman: Yes. I just received that this morning.

The Court: I think these people who are bringing this case under the Miller Act are entitled to have it determined within some reasonable time. It's already gone beyond a reasonable time. I'm not inclined to grant [1901] any continuance. If Mr. King is unable to attend, perhaps you can get counsel to stipulate what he will testify. If he is physically able to attend, and doesn't want to be inconvenienced, then an application to adjudge him in contempt would be in order here.

Mr. Holman: Your Honor, I'll call Mr. King at noon and advise your Honor further.

The Court: I won't grant any continuance in this case, and we're going to start longer sessions. We're going to continue until 4:30 today, and convene at 9:30 tomorrow morning. How long we go

tomorrow will depend on how we get along. I would suggest you have your witnesses here more rapidly than one every other day.

Mr. Holman: I have my witnesses here.

The Court: I am happy to hear that.

Mr. Holman: Your Honor asked me what the testimony was of Mr. King, but I take it now I'll hold that and talk to counsel; we may be able to stipulate. Call Mr. Staples to the stand.

GEORGE STAPLES

recalled as a witness on behalf of the defendants Macri, testified as follows:

Direct Examination

By Mr. Holman:

Q. Mr. Staples, you have already testified here. After you had lined out the job, who was employed for the purpose of building the forms? [1902]

A. John Klugg as carpenter foreman, and Robert Monrad.

Q. Now, what arrangement was made as to the plan of building forms with respect to the line of structures? What were your instruction to them?

A. Well, we were to follow down from the structures——

Mr. Olson: I object as being immaterial, if the Court please, what instructions Mr. Staples gave to Mr. Klugg and Mr. Monrad. This was at a time, as I understand, when they were under his employ.

(Testimony of George Staples.)

The Court: That was before Schaefer started in. What is the materiality of that Mr. Holman?

Mr. Holman: Merely to show the manner, the type of forms being constructed, your Honor, at the time Mr. Schaefer took them over as testified by Mr. Macri.

The Court: Well, would he be bound in any way by the type of forms that you were making before he started in?

Mr. Holman: No, I think not, your Honor, but I wanted to show what had been the structures that had been built, I mean what panels had been built for what structures.

The Court: Well, go ahead and show what had been done.

Q. (By Mr. Holman): Tell what had been done by way of building panels for forms, Mr. Staples.

A. Well, we were laying out the panels for 25 structures to take care of the first lateral; in other words, we planned to use 25 complete forms, which according to our plan would take care of the pouring of approximately 15 structures a day.

Q. Now, you had contemplated placing of how much concrete per day?

Mr. Olson: Now, I object to them testifying what their plans were.

Q. Very well, I'll withdraw the question. Mr. Staples, I believe you testified that you had charge of the operations of equipment? A. Yes.

Q. Yes; and I believe you testified that the hoe was used for excavating the structures?

A. Yes.

(Testimony of George Staples.)

Q. Will you explain, please, in detail to the Court how the hoe is operated to dig a structure excavation, both first for a shallow and then for an intermediate and then for a deep structure? How is it used, particularly with respect to its operations in cutting banks or effecting banks?

A. Well, the hoe proceeds down the pipe line until it comes to the structure station. As it approached the structure station the oiler or whoever is marking out for the cut [1904] stakes out the structure one foot outside of the neat lines of the concrete; then the hoe sets up at the most central point of operation to the structure, so that it has not too many moves around there, and proceeds to pull the earth from the far side across the structure and deposit it to either side, where it will be out of the way of form setters or concrete placing, and then——

Q. May I ask you, is the material pulled to the rear and deposited in the rear, or is it deposited on the sides?

A. It is deposited on the sides, away from the structure, so that it won't fall back into the hole, and so that it won't be in anyone's way that has to work around the structure, and in making its bite it reaches far out in front of the machine, because it can't possibly make a vertical cut, and when it pulls the earth toward the machine, it is rarely necessary to move the shovel back in order to get the ground out. In other words, at the far end of the structure and the near end, there is much more

(Testimony of George Staples.)

excavation done than is necessary, because of the size of the hoe and the length of the boom. It isn't possible to manipulate it in a small space.

Q. What sort of boom length did the hoe have?

A. Well, I believe we had a 35—about a 35-foot stick.

Q. That's what I mean by boom, is the stick, is it?

A. Yes. [1905]

Q. Then with respect to the excavation on the sides the same as the ends, and the hoe would the operation there?

A. Well, the structure was staked out at the sides the same as the ends, and the hoe would cut one width of the bucket, on a shallow structure, outside of the stake. The width of the bucket was 26 inches, and where we wanted a slope on it, we'd just knuckle down on the top of the bank with the bucket, which would knock all that earth loose, and it would fall to the bottom, and scoop it out, and have the rough excavating for that structure. In the case of a deep structure—

Q. Just a minute, Mr. Staples. Were the sides of the excavations for the form staked also, were the sides staked, or not?

A. Yes.

Q. Now, was there any offset, or were those right at the line of the side, where the form would go?

A. Well, the offset stakes were—on some of the structures were set back I believe five feet outside of the form. Their policy had been three foot offset, but when we were digging the hoe would reach

(Testimony of George Staples.)

across and would take out the three foot offset stake, so we requested that we have a five foot offset, so that when we were through with the excavation we'd still have a stake.

Q. Now, with reference to the reporter's table here, calling [1906] the end nearest you one of the ends of the structure, and nearest me the other end, and the side he's writing on and the opposite side as the sides of the structure, will you tell me whether or not there were any stakes opposite the sides of the excavation out here, where the reporter is and where the clerk's desk is?

A. Well, there's two sets of stakes. There are stakes all around the structure, which consisted of—rather, which were our marking for the cut, and then there's the Bureau stakes that give the location of the angle point and the structure itself.

Q. Now, in a hoe excavation what is the general condition at the bottom of the hole after it's been excavated? A. The bottom of the hole?

Q. Yes.

A. There would be in that soil usually about three tenths of loose dirt.

Q. That would be three tenths of what?

A. Three tenths of a foot.

Q. Three tenths of a foot of loose dirt; that would be about how many inches?

A. Well, I would have to look at the scale; 5 inches is $54/100$, and that's all I remember on the metric scale.

Q. Something less than 5 inches?

A. Yes. [1907]

(Testimony of George Staples.)

Q. Now, then, what was the fine grading process?

A. Well, the holes were cut about three tenths high, of the highest elevation in the cluster of structures, so that the floor would not be disturbed by the teeth of the shovel. The fine graders in coming along had to take down three tenths, which consisted merely of throwing out the loose dirt of the high level. The other levels had to be cut out by hand, unless they were separated far enough where it was safe to get in and scoop out some with the hoe.

Q. Was there a practical purpose for cutting with the hoe three tenths high; any reason for that?

A. Yes, so as not to disturb the floor level which they had to place concrete against.

Q. Now, after the hole had been dug with the hoe and fine graded, was there anything else to do then, in advance of placing the forms? Was it ready for the forms?

A. When the fine grading is complete it's ready to receive the forms.

Q. There's been some testimony here regarding measurements between you and Mr. Waltie around, or at least in the vicinity of, structure 18 on lateral 59.3. Do you recall that circumstance, Mr. Staples?

A. Well, structure 18, while I'm not sure of that structure number, I believe I know which one it is. It was at the [1908] south side of a road, it was the south side of a road crossing on the first lateral

(Testimony of George Staples.)

or one of its sub-laterals, in which the floor was over-cut by approximately two and a half feet, as I recall, and it necessitated cribbing and back filling and tamping to bring that back to grade.

Q. Now, was that done by you, or under your direction?

A. Yes, the cribbing of the over-cut on that one box was done under my direction.

Q. Was there any work remaning to be done on that one hole after you had completed that work that you've detailed?

A. Yes, there was a little work remained to be done.

Q. Can you tell the Court about how much work there was to be done and what was the nature of that work?

A. Well, the outlet box needed a little work on that, and just a little general trimming and cleaning out would be probably about two or three man hours, would have completed it.

Q. Can you tell me whether or not you and Mr. Waltie checked any holes together, Mr. Staples?

A. Yes, we did.

Q. About when—what time was it?

A. It was before—well, we checked some on April 29.

Q. What did you and Mr. Waltie do?

A. On April 29?

Q. No, when you checked the holes; you say—

A. Well, prior to that, when we made our first excavations, I asked him how he wanted the holes

(Testimony of George Staples.)

cut, and he said, well, just give them some room so they could get in there and set the form; that was new to them and they wanted to become acquainted with the work, and we'd see how that would go; in the meantime I could just continue with the excavation as it had been done, and we would find out what we needed to make it an easier process for them.

Q. Mr. Staples, in the hoe excavations was there any departure from the usual hoe excavation, restricted in any way, hoe excavations for structures—did you depart from that in any way?

Mr. Olson: I object to that question as asking for a conclusion from this witness as to whether he had departed from the usual hoe excavation.

Mr. Holman: I thought he had qualified the other day sufficient for excavation.

The Court: I think he can tell how he excavated the holes, but counsel is basing it upon his departure from what was usually done.

Q. (By Mr. Holman): Maybe counsel anticipated something I don't have in mind. Did you restrict the operation of the hoe as to either cutting toward vertical or otherwise than it is usual?

A. No, it wasn't, the operation wasn't limited; in fact, it [1910] was the other way.

Q. Now, in the measurements which you and Mr. Waltie made, what was determined as to those holes you measured?

A. Well, we had settled on about, I'd say, around four or five or possibly six structures that there

(Testimony of George Staples.)

should be some changes on before they set the forms. The principal correction that was needed was to cut back the banks to give them more room, and I agreed to do that work, and offered to give them two men, when they got into a structure and found they had to do some work, well, I provided one or two men to throw the dirt out for them, so that they would get ahead with their forming.

Q. Did you do that work, Mr. Staples?

A. Yes.

Q. On the holes you checked? A. Yes.

Q. Sir? A. Yes.

Q. You did.

A. I put the men back in with orders for them to do the work that Mr. Waltie wanted done, until we found exactly what type of hole they wanted, and how the operation would best proceed.

Q. Were you present when Mr. W. E. Schaefer was in the field setting up the form panels into a structure? [1911] Q. Mr. Schaefer?

Q. W. E. Schaefer, yes, sir; were you there?

A. Well, he was in the field. He never set up forms.

Q. You didn't see him set up any forms?

A. No.

Q. You did not. All right, sir. Who had charge of the fine grading while you were there, Mr. Staples? A. Sheffield.

Q. What is his name?

A. Curtis Scheffield.

Q. Do you know where he is now? Have you been able to find him? A. No, I do not.

(Testimony of George Staples.)

Q. What did you learn as to his qualifications for fine grading?

Mr. Olson: Now, if the Court please, I object to this witness testifying, obviously he's testifying to what somebody told him.

Q. I don't mean that. Strike the question. Did you know that he was qualified to fine grade?

Mr. Olson: I object to that, if your Honor please. The question is what was done. They may have had the most wonderful fine grader in the world, but if he didn't fine grade these holes, that's what we're up against. This is an attempt to bolster the case up by its shoestrings. [1912]

Mr. Holman: I'm not interested in bolstering. I want to know if this man knew he had a qualified fine grader.

The Court: I'll overrule the objection. It might be corroborative of whether the work was done properly. The question is how it was done.

Witness: Sheffield was on the job at the start and assisted in the location of the laterals for the clearing process, and was over the entire project and became familiar with every type of stake the Bureau used on the project, so that he knew stakes. In fact, part of the project, the last end, when the Concrete Construction Company got in and started to set forms, well, I went up with them and let Sheffield take the balance of the grading, and he was entirely capable of that. Also on the pipe line he had done a little of that work on the job; he knew how to set up a batter and how to take the

(Testimony of George Staples.)

levels and grades off of that, and how to fine grade for the pipe trench, and before I put him on structures I checked over some lay-out plans with him, and apparently he had a good working knowledge of the lay-out plans that he had to follow.

Q. Now, was he the man whom you proffered to Mr. Waltie to use, or not?

A. Yes, he was one of them. [1913]

Q. And another man, or not; how large a crew did you proffer?

A. Well, there would be one or two laborers to go with him, depending on how fast they were setting forms and the amount of work to be done.

Q. Did you satisfy yourself that the forms which had been checked by Mr. Waltie and you had been fine graded properly, Mr. Staples?

Mr. Olson: That question is objected to as being leading and suggestive, and further that it is immaterial whether or not he satisfied himself.

Q. Strike that question; I'll save time, your Honor. State what, if anything, you did toward checking, after fine grading operations, the holes that you and Mr. Waltie had checked before, Mr. Staples?

A. Well, I had gone in and checked several of the holes that we had discussed and measured, after we had made the necessary changes or recommended changes to the fine grading. Others, the forms were set in and I didn't check.

Q. Were you present at a meeting in the field on April 29, 1944, at which were present Mr. M. C.

(Testimony of George Staples.)

Schaefer, Mr. William E. Schaefer, Mr. Waltie, and Mr. Macri? A. Yes.

Q. I'll ask you whether or not that meeting had been pre-arranged [1914] by anyone with you; did you know of it in advance?

A. I did not know of the scheduled meeting.

Q. Yes, sir; and I believe it's been testified that meeting was April 29, 1944. Did you meet either Mr. Schaefer or Mr. Waltie the day before, do you recall?

A. Yes, the day before Mr. Schaefer came in the office and asked where Mr. Macri was, and I told him I didn't know, and he said well, he had an appointment to meet him, and requested that I contact him, so I called Seattle, and Seattle said that he was on his way to Yakima, and I told Mr. Schaefer, and I believe Mr. Schaefer said "Well, we'll be here tomorrow, then".

Q. Now, did you contact Mr. Macri himself that day, do you recall?

A. I believe if I remember it was the following day that I was able to contact him.

Q. And then where was that meeting on the following day, Mr. Staples?

A. It was in the field.

Q. Tell me just what you remember of that meeting, will you, including conversations, Mr. Staples?

A. Well, I was with the back hoe on lateral 59.5, or in that vicinity, and a truck driver came up and said that they wanted me to come over to

(Testimony of George Staples.)

lateral 59.3, and so I [1915] went over there, and Mr. M. C. Schaefer and Mr. William Schaefer and Mr. Macri and Mr. Fred Waltie were there discussing the holes. I believe we started at the first hole, which covered structures 1, 2, and 3, and they were discussing the amount of space they needed in order to set a form in and to pull the form out, and from that structure we went to the second hole and checked it over, and Mr. Schaefer pointed out what he wanted——

Q. Who did the checking?

A. Well, I believe Waltie and I checked a few of them, but the discussion there was that on the first holes it was an experimental proposition.

Mr. Olson: I would like to have him say what was said, your Honor, and who said it.

Mr. Holman: Yes, the best you can, Mr. Staples.

The Court: Yes, tell what was said and what was done.

A. Well, Mr. M. C. Schaefer said that “we’ll concede that the first structure is all right.” He said “We’ll pass that and go on to the next.” In other words, it was tight, and if we would watch that on the others, why, that would be O.K., so there was nothing more said about the first hole, and then to the next hole, and Mr. Schaefer pointed out the banks, and I believe we checked some grades, and I don’t recall whether they were at grade or not. As I remember it, those first several holes were off, and they needed some hand trimming to bring them right down to grade. I believe Fred

(Testimony of George Staples.)

Waltie and I checked the grade on one or two holes, probably about three holes, and then Mr. Schaefer said "Well, let's go on down the line." I said well, I knew the condition of those holes, he could take Mr. Macri on down and show them to him, that I was with the back hoe, and I wanted to get back to that, so I left the meeting and went to the back hoe.

Q. Now, do you recall any other conversations in your presence or hearing except what you've detailed to the Court?

A. The discussion while I was there was concerning the banks of the structures, and concerning the grades.

Q. Well, I say, do you recall any others except what you've detailed? A. No.

Q. Did you have any conversation at the job office on that day and after that meeting, with Mr. M. C. Schaefer and Mr. W. E. Schaefer, do you recall? A. I don't recall that I did.

Q. I'll ask you whether or not on that day and at the job office you made any statement to Mr. M. C. Schaefer, Mr. W. E. Schaefer, or in the presence and hearing of either or both of them, to the effect that Mr. Macri had told [1917] you to cut the holes wide enough, and that he told you to get things moving ahead, and then whether you made an additional statement that Mr. Macri told you to do that while Schaefer was there, but when he wasn't there, go ahead and cut them the way they had been? Did you make any such statement?

(Testimony of George Staples.)

A. No, the only thing that could possibly be construed as that would be over the depth of the cut of the hoe. I did misunderstand Mr. Maeri, I wasn't able to catch what he said, and he told me to cut those holes three tenths high with the shovel, and that had nothing to do with the fine grading; the fine grading was to go down to grade.

Q. Had you ever had any instructions to do the fine grading three tenths high, or two tenths high, or any other one high? A. No.

Q. What were your instructions with respect to fine grading?

Mr. Olson: Your Honor please——

Q. Very well, I'll withdraw it. Do you recall any conversation with Mr. W. E. Schaefer in the month of March, 1944, did you have any talks with him with respect to the excavations or the fine grading?

A. I believe there were two or three times that we discussed the excavations. [1918]

Q. I'll ask you whether or not as the result of those discussions——

Mr. Olson: Can you have him fix about an approximate time in March that he discussed this?

Mr. Holman: Well, if you'd give me the time that Mr. Schaefer said, that's the time we're talking about.

Mr. Olson: I don't recall his mentioning that at all.

Q. (By Mr. Holman): Do you remember the approximate time in March, or would you remember, that you had a talk with Mr. Schaefer?

(Testimony of George Staples.)

A. No, I don't. He was on the job several times, and early in the game, why, he discussed the excavations every time he came up.

Q. Now, after that time that you were out in the field on April 29, I'll ask you whether or not you had any discussion with Mr. Waltie within a reasonable time after that, a day or two afterwards? A. About that time Waltie and I——

Q. I'm interested after April 29, now; did you have any talk with Waltie?

A. Well, those dates are hard for me to remember, but I believe that within a day or two after April 29, we had agreed on the holes that needed correction.

Q. Now, when you say "we", you mean whom?

A. Waltie and myself; so I laid out my work accordingly, and was figuring on my schedule to keep ahead of them, and at that time they wanted 100 structures, which we agreed to give them, some way, and all I had to do was to get those holes corrected which had been discussed;——

Mr. Olson: Again I would like to have him state what was said, your Honor. He's just stating his conclusions as to what was agreed.

The Court: Yes, you should state what was said.

Q. If you can, state what was said, if you recall. When you say "we," again you mean Waltie and you; you said "we agreed"; is that Waltie and you?

A. Yes, Fred Waltie told me the structures that he wanted graded, so I made my plans to correct

(Testimony of George Staples.)

those structures and keep the shovel moving to go ahead and get ahead, so that we could get 100 structures out of the way and set up a fine grading crew that could go ahead and keep ahead of the carpenters by the requested number of holes.

Mr. Olson: I ask that last be stricken.

The Court: That will be stricken. That was what he planned to do. What did you do? What was said and done?

A. Then the next time I saw Fred Waltie——

Q. Well, just a minute. The Court has ordered stricken what you said. Now, tell the Court what you did. [1920]

The Court: That part of the answer which followed “I planned to do so and so——” will be stricken.

Mr. Holman: I thought he said “we”; “we” means Waltie and him.

The Court: No, he said “I planned to do so and so.”

A. Well, I put some men in to correct the errors, and kept them at that work until a day or two following, whichever it was, the next time I saw Fred Waltie, and then he said that none of the holes was correct; that they'd all have to be corrected.

Q. And had you meanwhile satisfied yourself as to whether or not those corrections had been made?

Mr. Olson: That's objected to, your Honor, as to whether he satisfied himself. Tell what he saw and what he found.

The Court: Yes, what he found.

(Testimony of George Staples.)

Q. When you checked them, what did you find by way of correction?

A. Well, I went back and checked three of the holes that I was reasonably sure were correct, and found that they were, and then just reported what I had found to Mr. Macri.

Q. Now, do you recall having any specific conversation with Mr. W. E. Schaefer in March, or in May, either? [1921]

A. I don't believe I had any conversation with him in May, but I don't recall.

Q. And do you recall any in March?

A. Not specifically, no.

Q. Well, I want you to recall them specifically. Was the offer, your offer, to keep Mr. Sheffield and helpers as fine graders used by Mr. Waltie? Did they use them?

A. They did for a while, and said they were in the way, and didn't want them.

Mr. Olson: Said what?

(Whereupon, the reporter read the last previous answer.)

Q. Well, about how long was it that they kept Mr. Sheffield and the fine graders, and his crew?

A. Well, I believe several days, but I'm not sure of the time.

Q. I'll ask you whether or not there was any list of men and time expended delivered to you by Mr. Waltie as a claim of work done by the Concrete Construction crew on digging?

A. Well, at one time Fred Waltie came——

(Testimony of George Staples.)

Q. Can you tell me about when?

A. It was around the first week in May, I would say.

Q. All right, what happened then?

A. Fred Waltie came to me with a list that he asked me to sign, and I asked him what it was, and he told me it was for extra work performed by his men on excavations, and I asked him what the purpose of that was, and he said that I was supposed to O.K. it so that he could send it in to the Concrete Construction Company office in Portland for to send to Mr. Macri for collection, and I told him that I didn't know anything about such an arrangement, and if there was such an arrangement to have it in writing so that I'd have authority to keep time on it or O.K. a bill that came in.

Q. Had you any instructions of any kind with respect to approving any such list?

Mr. Olson: That's objected to, your Honor, as asking for a conversation, obviously, between he and Mr. Macri.

The Court: Sustained.

Q. Did you know in advance that there was to be any such list prepared?

A. That was news to me. I had never heard of it before.

Q. Sir?

A. I had never heard that before.

Q. Now, were you present in the field on—the date's been fixed here as June 15, 1944, when Mr.

(Testimony of George Staples.)

Waltie, Mr. M. C. Schaefer, Mr. Macri, and Mr. Al Cohen were present, and it's also been testified that Mr. Allyn Hunter, the bond man, was there; do you remember that meeting? [1923]

A. I was in the field, but I wasn't present at that meeting.

Q. Were you called over to that meeting, Mr. Staples, do you remember? A. No.

Q. Sir? A. No, I was not.

Q. Did you attend that meeting at all?

The Court: He said no, he didn't attend it, he wasn't there.

Q. May I have 49, the book of photographs? I wish to hand you what has been offered into evidence as Exhibit 49. Calling your attention, Mr. Staples, to the photographs numbered 3, 4, and on through 14, as having been taken May 10, 1944, were you advised—will you look at those, please—were you advised in advance whether or not those were to be taken? Did you know anything about them being taken, in advance?

Mr. Olson: I think it is wholly immaterial, your Honor, whether we told them.

The Court: What is the materiality of whether he was notified in advance of when they were taken?

Q. Well, I want to know—were you present at the taking of them?

A. I was not present when the photographs were taken.

(Testimony of George Staples.)

Q. Now, will you take 49-3, and go on through those various [1924] photographs to 49-14, and indicate to the Court if you can, from those photographs, anything that you recognize by way of tying to your work?

The Court: What is that, Mr. Holman?

(Whereupon, the reporter read the last previous question.)

Mr. Holman: Tying to the work that the witness has done.

The Court: That's entirely too vague. I can't see what is to be elicited by that question; I haven't the slightest idea.

Q. Will you take 49-3, please, Mr. Staples, and tell the Court what, if anything, in that picture you recognize and can point out to the Court pertaining to your excavation?

A. Well, it shows a form in an excavation that I couldn't identify as to station.

Mr. Olson: Now, your Honor, it seems to me that counsel is asking the same kind of a question there that we were not permitted to do. I wanted to have Mr. Darcy testify to what those pictures showed. Counsel said the pictures spoke for themselves as to what they showed. Now, I don't think they should be able to put their foreman on and have him testify to what they show.

The Court: I don't know yet what counsel wishes [1925] to elicit from the question. It is impossible to tell from the question itself.

(Testimony of George Staples.)

Mr. Holman: I wanted, your Honor, to see whether or not any of those pictures which I have indicated, while he was there he can tie to any particular stations.

The Court: Oh, you want to know whether he can identify them to any particular stations? It didn't say anything about stations, as I recall.

Mr. Holman: I should say structures.

The Court: Or structures.

(Whereupon, the reporter read the last previous question.)

Mr. Holman: That's what I had in mind, with respect to those structures, your Honor.

The Court: You had in mind the numbers of the structures; is that what you're trying to tie to?

Mr. Holman: No, your Honor, I had in mind tying to the structure excavations this witness had made, if he knew; if he can't, he can say so.

The Court: You want to know if these photographs are photographs of structures that he excavated, or were excavated under his supervision?

Mr. Holman: Yes, if he recognizes them.

The Court: All right.

Q. (By Mr. Holman): For instance, do you recognize 49-3? [1926]

A. Only by the identification, structure number 6; I know that was my excavation.

Q. You mean that's the typed printing on there, is that what you mean?

A. Yes; the structure itself I couldn't identify.

(Testimony of George Staples.)

Q. Now, will you go right through rapidly with each one, up to 14, and if you find any you can identify, indicate it to the Court?

A. Well, number 5 shows a bank, far from a vertical bank; maybe it is not a one to one, but it is awful close to it.

Mr. Olson: I move that be stricken.

The Court: That's not responsive; it will be stricken. He's asking whether or not you can tell whether these are structures you worked on, from looking at the photographs.

A. I cannot.

The Court: All right, he can't do it, he says. Proceed.

Q. That's all I want to know, your Honor. I think I'm nearly through with this witness, your Honor. Did you have any conversation on June 29 with this Mr. Hunter whom I mentioned, Allyn Hunter?

A. No.

Q. Mr. Staples, what is the fact with respect to the relative [1927] cost of cutting banks vertical with a hoe, for structure excavations, as against cutting them with a slope?

Mr. Olson: That's objected to, your Honor, as being wholly immaterial, what the cost of doing it one way as against the cost of doing it the other way is concerned.

The Court: What is the materiality? What is your purpose, Mr. Holman?

Mr. Holman: My purpose only is to show by this witness which would be the more economical, whether cutting straight down or with a bank.

(Testimony of George Staples.)

The Court: What difference does it make?

Mr. Holman: Well, I'm merely calling him as an expert on it; I don't know, your Honor.

The Court: You don't know why it is material?

Mr. Holman: I think it is material.

The Court: Why?

Mr. Holman: Because it shows the reasonableness of the operation in the usual manner, your Honor.

The Court: Objection sustained.

Mr. Holman: You may inquire.

The Court: The Court will recess for five minutes.

(Short recess.)

(All parties present as before, and the trial was [1928] resumed.)

The Court: Proceed with the cross-examination.

Cross-Examination

By Mr. Olson:

Q. Mr. Staples, do I understand that you excavated these holes a foot out from the neat line of the concrete at the foundation of the structure? Do I understand you to so testify?

A. Not at the base line; the excavation I explained was from the surface. Of course it would go down to the base line.

Q. The foot out that you're talking about is at the surface of the ground, from the neat line of the concrete?

(Testimony of George Staples.)

A. That's where the cut is started, yes. That is the hoe operation. It is not a foot out, it is 26 inches, the width of the bucket.

Q. I'm asking you, then, Mr. Staples, did you excavate out one foot from the neat line of the concrete at the foundation or base of the structure?

A. In nearly every case, yes.

Q. In nearly every case?

A. There are exceptions to that, and that was on the first lateral and the first holes, and they were close.

Q. On the first lateral the first holes were close?

A. Yes.

Q. Outside of that you excavated them a foot out at the base of the structure? [1929]

A. Yes.

Q. And did you slope the banks at a one to one slope?

A. The end banks were sloped, had to be, the way the hoe cuts; the side walls, which were vertical at the time the hoe cut them, were knocked down so that they were sloped.

Q. Now, the end banks, are those the ones that are in the ditch itself?

A. Well, it would depend on the way the shovel was facing.

Q. Well, how did the shovel face?

A. Well, in every case it would be different, just depending on where you could set up the shovel and carry on your excavation the easiest.

(Testimony of George Staples.)

Q. Well, then, when you got through, did you have a one to one slope?

Mr. Holman: Object to that, your Honor, as not the test.

The Court: Overruled.

A. After the first lateral none of the structures had vertical walls.

Q. Were they to a one to one slope? I'm speaking of the excavations, and not the structures.

A. They were not precisely to a one to one slope, nor were they vertical.

Q. Now, it is a fact, is it not, Mr. Staples, that while [1930] you were on the job and Mr. Waltie was there, that he continuously complained to you about the holes, the excavations, not being to a one to one slope, and about them being tight?

A. The only complaints he had were in the discussions we had on those first, I believe there were six structures, he had complaints about those.

Q. I'm not asking what complaints he had, but what did he say to you? Did he make complaints to you?

A. That was on those specific holes; it was on being tight.

Q. Well, he complained to you about more than just the first six holes, didn't he?

A. No, not until the last meeting I had, and at that time overnight he changed his mind and decided that every hole was incorrect.

(Testimony of George Staples.)

Q. Yes, and he also complained to you about the sub-grade, didn't he, of each of the excavations?

A. He did on those specific structures, the six that I mentioned.

Q. But not on any of the others? A. No.

Q. Then why was it, Mr. Staples, that you were going to give him your fine grading crew to work under his supervision, if he wasn't saying anything to you about it?

A. Well, that was on those six structures. I had gone in [1931] there when they first started, and Waltie was digging, and I told him that was our job, and if it was necessary, I'd give him several men; it wasn't necessary for him to do the digging.

Q. Well, you said a while ago, Mr. Staples, did you not, that you told Mr. Waltie you would give him Mr. Sheffield and one or two men, and as many more as he needed, to work under his direction in fine grading these holes?

A. That's right, on those six structures.

Q. Was that just to last for the first six structures? A. Pardon?

Q. Was that just to last for six structures?

A. Yes.

Q. When was it you said that to him?

A. Well, that was when he was forming the structures in about the second or third hole. It was right at the start.

Q. Now, Mr. Staples, on your fine grading crew, how many men did you have on the fine grading crew?

A. It varied from two to five men.

(Testimony of George Staples.)

Q. Two to five men, and that was true throughout the time you were there? A. Yes.

Q. Did you have anybody doing work for you classed as laborers, other than the fine graders?

A. Yes.

Q. What would they be doing?

A. Well, it depends upon what time you mean. At various times we had laborers on clearing.

Q. Now, I'll hand you Macri's identification 15, and ask you to take the period of time that you were there, and ask you how this Mr. Sheffield—strike that—as I understand it, Curtis Sheffield was your man in charge of fine grading?

A. Yes.

Q. And does he appear on your payroll there?

A. Yes.

Q. Under what designation?

A. Well, I don't see it here, but by union agreement he was carried as a——

Q. Never mind; my question is——

Mr. Hawkins: Let the witness answer the question.

The Court: Under what designation does he appear on the payroll?

A. Truck driver.

The Court: I think under that it would be improper for him to say what the union rules or agreement was. He can say how he was designated on the payroll.

Q. Is he not designated as such on each one of those weekly payrolls? [1933] A. Yes.

(Testimony of George Staples.)

The Court: What was the designation?

A. Truck driver.

Mr. Holman: I don't follow you, "so designated."

Q. He said he was designated as a truck driver. Now, when did you start your fine grading, Mr. Staples?

A. Probably around the middle of April.

Q. Could you find your payroll for the week that you started your fine grading?

A. Well, I wouldn't be able to pick the starting date, but it is——

Q. Well, there's two of your payrolls missing, are there not, Mr. Staples? In other words, the one for the week ending April 15 is not there, is it?

A. That's right.

Q. Take your——

Mr. Holman: Just a minute, may it please the Court.

Mr. Olson: He said that's right.

Mr. Holman: Well, I don't hear him.

The Court: Perhaps if you speak up a little louder; they don't hear you.

Q. (By Mr. Olson): Take the week ending May 3, April 27 to May 3. Can you find that one?

A. Yes. [1934]

Q. All right; now, how many fine graders do you have on the payroll that week? A. One.

Q. And who is he? A. Sheffield.

Q. All right; and how many hours?

A. 40 hours.

(Testimony of George Staples.)

Q. 40 hours, and he's designated as a truck driver? A. Yes.

Q. All right; now take your next week, May 4 to May 10; how many fine graders did you have on that week? A. Seven.

Q. Seven; all right, now, were those seven on all during the week, or do you mean seven different men throughout the week?

A. Well, some of them, three of them, started their week the last day of that pay period.

Q. And how many other men did you have on that last day of the week, fine grading?

A. Seven were on that last day.

Q. May I see that, Mr. Staples? Now, what day is that, Wednesday? Now, who are the fine graders, the seven you had on?

A. Brown, Fowler, Wiley, Sells, Amick and Hernandez.

Q. Amick doesn't appear on the payroll, does he, that day? [1935]

A. No; neither does Hernandez.

Q. Neither does Hernandez? A. No.

Q. So you didn't have that many on that day, did you, Mr. Staples?

A. There were five on that day.

Q. Now, on Monday, how many did you have on?

Mr. Holman: Give the week, will you?

Q. That's the week ending May 10; pardon me—I don't mean Monday; the first day you show on that you show on a Tuesday, don't you?

A. Yes.

(Testimony of George Staples.)

Q. How many fine graders did you have on that day? A. Three—four.

Q. And who are they? A. Sheffield—

Q. That's designated truck driver?

A. Yes. Hernandez—

Q. Hernandez designated labor; that's two.

A. And Sells.

Q. Sells on for five hours, designated laborer?

A. That's right.

Q. All right, now the next day?

A. The next day, Sheffield, Hernandez, Amick; that's all.

Q. All right; now take your next week. How many fine [1936] graders did you have on the next week, May 11 to May 17? A. Four.

Q. That's including Mr. Sheffield?

A. Yes.

Q. Now, that's all the laborers you show on the payroll that week, is it not? A. Yes.

Q. So you're saying that they were all doing hand grading?

A. That's what they're on the payroll as.

Q. They're on the payroll as laborers, are they not, Mr. Staples? A. Yes.

Q. In other words, for the week ending May 17 your payroll shows three laborers, does it not?

A. Yes.

Q. And it doesn't show that they each worked every day during the week, does it? A. No.

(Testimony of George Staples.)

Q. Matter of fact, the three of them together only worked 80 hours the whole week, which is two men working 40 hours a week, isn't that so?

A. Between the laborers, but Sheffield was on in addition.

Q. Yes, Sheffield, who was designated a truck driver. Now, do you know whether or not those laborers were doing anything else other than hand grading that week? [1937]

A. Principally that's all they did.

Q. Now, your next week how many did you have on, May 18 to May 24, how many laborers do you show on your payroll? Three, is it not?

A. The labor classification is three.

Q. Three; all right, and they didn't work every day, did they? A. No.

Q. But the three of them total 60 hours for that week? A. Right.

Q. All right, now the next week how many, May 25 to May 31, how many laborers do you show on there that week? I'm excluding Mr. Sheffield. How many laborers do you show on there? There's only one, isn't there, Mr. Staples?

A. There's one laborer.

Q. Yes, and how many hours did he work that week? A. Twenty-four.

Q. All right. Now, your week of June 1 to June 7, how many laborers do you show on that week? Again there's one, isn't there, Mr. Staples?

A. There's no laborers on this.

(Testimony of George Staples.)

Q. Ending June 7? A. Oh, May 30——

Q. I'm asking for the week ending—well, pardon me, did I skip one? [1938]

A. Well, there's a man on there for doing structure work, outside of Sheffield.

Q. Now, what week are you talking about?

A. June 7.

Q. All right, June 7 you show one man beside Sheffield? A. Yes, for fine grading.

The Court: When you say the week of June 7 do you mean the week ending June 7?

Q. Yes. How many hours did he work?

A. The laborer, or the fine grader?

Q. Was the laborer doing fine grading?

A. No; there's a fine grader on here, has been for a couple of weeks, but he's not classified as a laborer.

Q. What is he classified as? A. Lay-out.

Q. I thought you said your lay-out man was the one who staked the holes for the shovel?

A. No.

Q. Well, then, who is your lay-out man there?

A. Leonard LeMaster.

Q. And what did he do?

A. He helped Sheffield lay out the structures for fine grading, the finish work.

Q. Well, was he in charge of the fine grading, or was Sheffield in charge of it? [1939]

A. Sheffield was in charge.

Q. But this other man did the laying out?

A. Under Sheffield.

(Testimony of George Staples.)

Q. All right. Now, in the week ending June 14, how many do you show working on your fine grading crew then, and under what designation?

A. Sheffield, LeMaster——

Q. That's two, Sheffield is shown as truck driver.

A. LeMaster, lay-out, Fowler, laborer; that's three.

Q. That again takes in all the laborers shown on that week, does it not? A. Yes.

Q. Pardon me, before I leave this, on June 14 how many hours did your laborer work that week?

A. Eight hours.

Q. Eight hours; that's one day, isn't it?

A. Yes.

Q. All right; now, your lay-out man, how many hours did he work that week? A. Sixteen.

Q. That's two days. Now, Sheffield, how many hours did he work that week? A. Forty.

Q. Forty. All right, on the week ending June 21, how many fine graders did you have on that week? [1940] A. Four.

Q. Four, and under what designation are they shown on your payroll?

A. There are three laborers and Sheffield.

Q. Now, your lay-out man is gone now, is he?

A. Yes.

Q. So there's Mr. Sheffield and three laborers?

A. That's right.

Q. And that again takes in all the laborers that you show on the payroll for that week?

A. That's right.

(Testimony of George Staples.)

Q. Now, weren't your laborers doing anything else at all besides fine grading?

A. Whenever there was need for the fine graders to do the fine grading, that work came first.

Mr. Olson: I ask that be stricken, your Honor, as not being responsive.

The Court: I'll deny that. I think it is responsive, generally.

Q. Well, did they do anything else?

A. Yes.

Q. And what all work did your laborers do?

A. At infrequent periods they would assist in scattering pipe.

Q. Assist in scattering pipe?

A. Yes. [1941]

Q. Anything else?

A. I believe that's all.

Q. Had Mr. Maceri sub-contracted the excavations for the pipe?

Mr. Holman: Objected to as outside of the issues, your Honor, and not proper cross-examination.

The Court: Overruled.

A. No.

Q. He did that work himself?

A. Up until that time, yes.

Q. So at the time that we've gone into these payrolls, Mr. Maceri was himself doing the pipe trench excavation?

A. The pipe trench excavations all the way through the job.

(Testimony of George Staples.)

Q. Pardon?

A. The pipe excavations, trench excavations, were not subbed.

Q. Now, it was your suggestion, then, to Mr. Waltie, Mr. Staples, that Mr. Waltie take this Mr. Sheffield and possibly some additional help, and that he show them how to do this fine grading?

A. No.

Q. Well, what did you tell Mr. Waltie, then?

A. I told him that where work to be done, it was our part of the contract to do that work.

Q. Yes.

A. And I would leave one or two men, or whatever was necessary, in order to do that work for him so he wouldn't [1942] have to do it.

Q. Well, who was going to tell them what to do and how to do it, Mr. Staples?

A. Well, at the beginning of the job Waltie was to show them how they wanted the banks cut back, what they needed for room, the principal reason for that being that at the start of the job they preferred a vertical wall, because they can place more effectively and with less labor——

Mr. Olson: I ask that be stricken as not responsive.

Mr. Holman: I submit it is, your Honor.

The Court: I'll grant the motion. It doesn't appear who "they" are, or who told him that. That is very vague.

(Testimony of George Staples.)

Q. (By Mr. Olson): My question is, Mr. Staples, I'll ask it again, who was going to tell Sheffield and the other men that you were going to leave with Mr. Waltie how to do the fine grading?

A. They were over there so that if a wall needed to be taken back more to suit Fred Waltie's idea, these men would take it out. They weren't there to learn how to take it out, or how to read grades.

Q. They were taking instructions from Mr. Waltie, then?

A. They were to take out the dirt at his direction.

Q. They were to take instructions from Mr. Waltie, is that [1943] so, or were they to take instructions from you?

A. Well, the truth of the matter is that there was some more dirt to come out there.

Q. Mr. Staples, just answer my questions. You turned these men over to Mr. Waltie. Now, I'm asking you who were they to take instructions from, Mr. Waltie, or yourself?

A. From Mr. Waltie.

Q. All right; and at that time that was the entire crew of fine graders that you had, was it not?

A. No, I don't think it was the entire crew.

Q. On April 28, Mr. Staples, you say Mr. Schaefer came in and said he wanted to see Mr. Macri?

A. Yes.

Q. And you said you didn't know where he was?

A. I believe so.

Q. Now, isn't it a fact that Mr. Schaefer then told you and complained to you about these exca-

(Testimony of George Staples.)

vations in detail, that they were not to a one to one slope, that the sub-grades or sub-elevations were wrong, and that they were not excavated out to the proper lateral clearance; didn't Mr. Schaefer say that to you? A. He could have.

Q. Well, he did?

A. At several times he did, but I couldn't name the place or the time. [1944]

Q. Did you ever see Mr. Schaefer, I'm speaking of Matt Schaefer, when he didn't complain to you about the excavations?

A. Well, there was about three occasions that I talked to him about the job, and on those three occasions I believe he brought it up.

Q. Well, he brought it up rather emphatically, did he not, Mr. Staples?

A. Well, I knew what he was saying.

Q. Yes, and on this April 28 he then told you that if you didn't get Macri on the job so that he could see him and get this job fixed up, he was going to pull his men off and go home, on April 28 didn't he say that to you?

A. Well, he could have. All I recall is that he asked me to get Mr. Macri. I remember that distinctly.

Q. Yes, and you said you didn't know where to get him? A. I believe so.

Q. And so Mr. Schaefer said if you didn't get hold of him then and get these excavations on the button, that he was going to pull out and go home with his crew? A. Well, I don't recall that.

(Testimony of George Staples.)

Q. And didn't you then get hold of Mr. Macri in Yakima?

A. I believe it was the following day.

Q. Didn't you get hold of Mr. Macri that day, right here in Yakima? [1945]

A. Well, I made the calls right in front of Mr. Schaefer, while he was there, and whether I got him that day or the next day, I don't remember. I kept calling until I could get hold of him.

Q. But you got hold of him that same day, right in Yakima? A. I don't remember that.

Mr. Hawkins: I wonder if Mr. Olson will make that clear; do you mean Mr. Macri was in Yakima?

Q. Yes, Macri in Yakima, Staples in Sunnyside.

A. I called Mr. Macri's office in Seattle.

Q. Do you have a record of that long distance call? A. I don't.

Q. Isn't it a fact also that after you got hold of Mr. Macri you told Schaefer you knew where Macri was all the time, but that he had told you not to bother him? A. I don't recall that.

Q. Pardon? A. No.

Q. You don't remember telling Mr. Schaefer that? A. No, I do not.

Q. Well, Mr. Macri had told you that, hadn't he? A. He did not.

Q. Now, I didn't get the time it was that you were up with Mr. Schaefer checking the excavations, with Mr. Matt Schaefer. [1946]

A. The time I was checking with him?

(Testimony of George Staples.)

Q. Yes, or was it Bill Schaefer that you were out checking the excavations with?

A. I only remember checking with Fred Waltie, and actually measuring the holes.

Q. Well, you testified, Mr. Staples, about Mr. Schaefer pointing out the banks and about checking the grades; now, you don't recall that at all?

A. Well, yes, he pointed out the banks, but we didn't actually measure the structures.

Q. What Schaefer was that, Bill or Matt?

A. Well, it was both of them, at different times.

Q. All right, and they both of them pointed out to you about the banks not being sloped?

A. Yes.

Q. And also you said you checked some grades and they needed some change on the grade, is that so?

A. That I checked by myself.

Q. I'm just asking you what you said, Mr. Staples. I didn't quite follow you on it.

A. I said that I checked some grades.

Q. With Mr. Schaefer?

A. No.

Q. You didn't check any grades with either one of the Schaeferes? [1947]

A. I don't think I did.

Q. Now, you didn't mean to say that you discussed excavations with Mr. Bill Schaefer in March, did you, of 1944?

A. I think so.

Q. Well, you hadn't started yet, had you?

A. Well, I hadn't discussed structures with him until after they were on the job, and some excavations had already been made.

(Testimony of George Staples.)

Q. Well, you didn't start your structure excavations until April, did you?

A. That's right, it would be in April.

Q. Yes. Now, you also said that you checked three holes after Mr. Waltie had talked to you, as I understand it, you went back and checked three holes and found them correct. Do you remember the three holes that you were talking about, or do you remember the testimony I'm referring to?

A. Yes.

Q. Well, what three holes did you check?

A. Well, I don't know which ones they were; they were on the first lateral, and ones that I just happened to be near.

Q. Now, you say you found them to be correct. What do you mean by that?

A. Well, they were according to plans and specifications.

Q. Were the banks sloped to a one to one?

A. No.

Q. They were vertical, or nearly so, were they not?

A. Well, they weren't vertical.

Q. I say, they were approximately so, were they not?

A. Well, I don't recall about that, but they were not a straight cut, I know that.

Q. And they weren't out a foot from the neat line of the concrete structure, were they, at the base of the excavation?

A. Yes, they were.

(Testimony of George Staples.)

Q. Did you check that?

A. I measured them for grade and for width and length.

Q. Were the forms in there then? A. No.

Q. Do you know when you did that?

A. It was right after Fred Waltie said that none of the holes were correct.

Q. Do you know when that was?

A. No, I don't.

Q. And how many excavations were ready at that time, or had been excavated?

A. All of the first lateral, and possibly half of the second lateral.

Q. And you checked three?

A. On the first lateral. [1949]

Q. Is that structures, or excavations?

A. Excavations.

Q. You didn't check any more of them?

A. No.

Q. Now, you also said, Mr. Staples, that Mr. Waltie said that he didn't want these fine graders or men that you were offering him, and that after a few days he said that they were in the way. Do you remember when that conversation took place?

A. No, I don't, but they had probably five or six holes for them by that time.

Q. My question is, do you know when it was?

A. No.

Q. All right; now, just what did Mr. Waltie say?

A. I don't believe there was any more of a conversation than that.

(Testimony of George Staples.)

Q. Well, did you say anything to him?

A. No, all I said was that the men were available if it was necessary for them to do any work on those first holes, and that we'd cut those holes in a way to keep ahead of them, and would try to get him 100 structures ahead, and keep out of his way.

Q. And why in the world didn't you do it, Mr. Staples?

Mr. Holman: I object to that question; I think it is improper cross-examination. [1950]

Mr. Olson: He keeps coming back and saying he's going to do it.

The Court: It is argumentative. I don't think there is any testimony that they did get 100 structures ahead.

Mr. Olson: No, I didn't ask about it, but he keeps saying it all the time.

Q. (By Mr. Olson): Isn't it a fact Mr. Waltie told you these men didn't know how to fine grade, didn't know how to read a hub, and they didn't know how to find an elevation, and for that reason they were in his way? A. No.

Q. They didn't know how, did they?

A. Sheffield knew how; the laborers are not supposed to know how.

Q. Oh, the laborers are not supposed to know how. Now, did Mr. Sheffield ever drive a truck on your job? A. Yes.

Q. He did that most of the time, didn't he?

A. No.

Mr. Olson: That's all.

(Testimony of George Staples.)

Redirect Examination

By Mr. Holman:

Q. Why was Mr. Sheffield noted as a trucker on the payroll, Mr. Staples?

A. Well, it was necessary because of his union card. [1951]

Q. Will you explain that?

A. Well, he was by agreement with the union, we could use him on various classifications, and carry him on the truck driver's card, and the truck driver's basis.

Q. Was that the reason—pardon, are you through?

A. That's the only reason he was carried that way.

Q. Counsel at the opening of his questions with you about these meetings used the name Darcy. I am sure that was a mistake, that he meant Waltie. You had no talks with Darcy? A. No.

Mr. Olson: If I said Darcy I didn't mean that.

Q. You had no talks with Darcy at all, did you?

A. No.

Q. Darcy was not on the job while you were there?

A. He may have been there at the last part, but I think he came later.

Q. Did you have any conversation with Darcy about the holes? A. No.

Mr. Holman: That's all.

(Testimony of George Staples.)

The Court: Do you have any examination?

Mr. Hawkins: I wanted to ask the question that your Honor sustained an objection to, as to the relative cost in making a vertical excavation as against making an excavation on the one to one slope. I asked the witness [1952] what his answer would be to that question, when he stepped down at the recess, and he told me that his answer would be that there would be very little difference in cost. I would like to get that testimony in. I think it is material, for this reason, that it tends to support the testimony that he gave that no request was made on his part by Waltie——

The Court: If that's the answer to be given, it would be corroborative, to a certain extent. You may ask it, then.

Cross-Examination

By Mr. Hawkins:

Q. Mr. Staples, what is the relative cost in excavating for one of these structures, as to whether the walls are vertical or whether they have a one to one slope?

A. Well, the cost—there is very little difference, inasmuch as the front wall and the end wall, that face the back hoe, cannot be cut vertical, and therefore in order to secure the one to one slope, all that's necessary is to cut the proper width at the side and knuckle down the bank and clean out the bottom.

(Testimony of George Staples.)

The operation wouldn't consume probably more than just two or three minutes of the shovel's time.

Mr. Hawkins: That's all.

Mr. Holman: I would like to ask—I thought counsel had a question or so to ask. [1953]

Mr. Olson: You finish first.

Redirect Examination

By Mr. Holman:

Q. Mr. Staples, do you recall the size of the Concrete Construction Company crew during the period that counsel asked you, from the week of May 3, 1944, through June 21, 1944?

A. Yes. They had approximately—they had two men in the yard building panels, and they had I believe three men in the field.

Q. Now, then, that would be throughout that period, if you recall that?

A. That was what they had most of the time. There was one or two occasions they brought in more men for field assembly.

Q. Do you recall whether or not between the date of May 24 and June 28 Mr. Waltie was present or absent from the job?

A. I believe he was in Portland during that period.

Q. Do you recall whether or not from the week of May 31 until Mr. Waltie returned there was anybody in charge?

A. None except their men in the yard.

(Testimony of George Staples.)

Q. And who were those men, if you recall?

A. Klugg and Monrad, and possibly Mercelle.

Q. Were those the only men there at that time?

A. I believe so.

Mr. Holman: Your Honor, at this time the defendants [1954] wish to introduce from Macri's 16 the portion of the Concrete Construction Company payroll for the period from the week of April 27—let's see, the week ending May 3, 1944, to and including the week ending June 21, 1944, as illustrative of this witness's testimony. I will have copies made to substitute, your Honor.

Mr. Olson: Your Honor, it doesn't illustrate this witness's testimony at all. He's testified how many men we had on the job. We have testified at great length that during that period we pulled our men off, except two men. I don't see that the payroll will substantiate anything. The testimony is that the reason we pulled them off was that there was no structure excavations to work on. There is no controversy on that.

The Court: I can't see where his testimony makes the documents admissible.

Mr. Holman: Well, the documents themselves, your Honor, are documents submitted by the Concrete Construction Company to the Bureau of Reclamation, and it is their own showing under oath of the payroll they had there at that time, the same period that counsel's interrogating this witness.

(Testimony of George Staples.)

The Court: He's interrogated him about the number of men you had on, and you've brought out from him the number that the Concrete Construction Company had, [1955] haven't you? That's your testimony?

Mr. Holman: Yes, that's right.

The Court: I can't see where it makes the payroll admissible, the mere fact that he has testified that was the number they had on, and it happens to be the same number shown on this document. It may be otherwise admissible, I don't know.

Mr. Holman: A declaration against interest, your Honor, as far as the Concrete Construction Company is concerned, with respect to the cross-examination of this witness; that's the purpose of it.

The Court: Well, if it is properly identified it might be admissible as an admission against interest. I don't think it would be, simply because the witness has referred to it.

Mr. Holman: No, that's correct.

The Court: I'll sustain the objection. If you want to offer the whole thing later, we'll consider whether it is admissible.

Recross-Examination

By Mr. Olson:

Q. Mr. Staples, you say that this Mr. Curtis Sheffield had a truck driver's union card?

A. Yes.

(Testimony of George Staples.)

Q. And that was your man that you had in charge of your fine grading? [1956] A. Yes.

Q. Now, the time that you just testified about the Concrete Construction Company having two men on the payroll, during the latter part of May and the first part of June—is that the period you refer to? A. That's the approximate period.

Q. Now, that's the time, is it not, Mr. Staples, when the Concrete Construction Company pulled its field crew off the job because there was no structure excavations ready to work on?

Mr. Holman: I object to that as calling for a conclusion of the witness.

The Court: He can answer if he knows. Overruled.

A. That's what they said.

Mr. Olson: That's all.

Mr. Holman: That's all, Mr. Staples.

(Whereupon, there being no further questions, the witness was excused.)

ARTHUR ANDERSON

called as a witness on behalf of the defendants Macri, being first duly sworn, testified as follows:

Direct Examination

By Mr. Holman:

Q. Will you please state your name and your place of residence, and your present occupation?

A. My name is Arthur Anderson, reside at Sunnyside, Washington; general contractor. [1957]

(Testimony of Arthur Anderson.)

Mr. Olson: I didn't get your first name.

Q. Arthur Anderson. Mr. Anderson, will you state what experience you have had in connection with the Roza Project?

A. I first went to work on the Roza in 1939, and been on it since, until last year.

Q. Now, during that time you had what jobs and what was your capacity on them?

A. Well, the first two years I was carpenter foreman on two wasteway jobs. After that I was superintendent on three different—four different jobs.

Q. Are you familiar with the job known as specification 1062, schedule 1?

A. That's what you call Macri's job?

Q. Macri's job, yes. A. Yes.

Q. Will you tell me whether or not you had any jobs in that close vicinity? What jobs did you have?

A. Well, I had a job just like that just west of Macri's. At that time I was working for Murphy-Campbell. We had a job just like that.

Q. And who had been your various employers on your jobs out there? A. What's that?

Q. Who have been your various employers?

A. Well, Murphy-Campbell Company, L. Col-lucio, Bernard & Curtis Company, Dave Richardson, Adler Construction Company.

Q. What was your capacity in these various jobs? What were you doing?

A. Well, the last four of them I was general superintendent.

(Testimony of Arthur Anderson.)

Q. Yes, sir. Now, in the course of those operations did you have occasion to use a hoe in excavation? A. Yes.

Q. Tell me whether or not the hoe is the usual and economic manner of excavation for a structure?

A. Yes, small structures, yes.

Q. And when you say small structures, does that refer to structures of the type on the Macri job?

A. Yes.

Q. How much occasion did you have to become familiar with the operations on the Macri job, yourself?

A. Oh, I went over it three or four times every day for about six or seven months.

Q. And during what months were those?

A. Well, from the first of February until, oh, September or October, that year, 1944.

Q. And during that time did you have occasion to observe the type of excavation for structures being done? A. Yes. [1959]

Q. And from your experience were you able to tell whether or not they were excavated adequately for the accommodation of forms?

Mr. Olson: Now, if the Court please, I think that the witness should first describe what kind of an excavation he is referring to.

Q. Very well. Will you describe the type of excavation that you saw on the Macri job during that period, Mr. Anderson?

A. Oh, I saw all these structures; I saw the holes excavated for structures along the roads. Of

(Testimony of Arthur Anderson.)

course I didn't go over the whole job. There was a hoe used there digging those holes, some men fine grading in that; just the usual procedure on a job like that.

Q. And were they with respect to type—what type of structures—what was their equipment, do you remember?

A. Well, the most I saw was road crossings.

Q. Road crossings; and what type of equipment was used on those, do you remember?

A. Hoe.

Q. The hoe. Will you explain to the Court how a hoe is used in the operation for excavating structures, as you saw it operated on that job?

A. Well, you bring the hoe up to where the hole is supposed to be dug, and start dipping out the dirt.

Q. And what is the actual operation? How does it work? [1960]

A. Well, it's kind of hard to explain, if you don't know what a hoe looks like.

Q. Well, explain what a hoe looks like, then.

A. All right; a hoe is a shovel with a hoe attachment on it. It is a boom about 25 or 30 feet along. It reaches out, scrapes the dirt toward you.

Q. And what with respect to the side banks of an excavation, what happens to those in that operation?

A. Well, in the far end and the end next to the machine, naturally will be sloped down in quite a slope, and each side of them will be practically straight up and down.

(Testimony of Arthur Anderson.)

Q. Now, can you tell me generally as to the type of structures that were on this Macri job, as to whether they was pretty small structures, or large structures?

A. Oh, they are all small structures.

Q. And by that you mean what?

A. On those road crossings it would be, well, say, seven foot by five, that's length and width, and the depth varies anywhere from four feet to seven feet, approximately.

Q. Now, in a deep structure, let's say a seven foot structure, what is the operation of the boom of the hoe there? Can it cut vertical, or must it cut on a slope?

A. Oh, a deep structure like that they will cave in by themselves, the sides will cave in; you can't dig straight up and down. [1961]

Q. And is a vertical bank with a hoe a practical operation?

A. Yes.

Q. Sir?

A. I didn't—

Q. I say, is a vertical bank, cutting an absolutely vertical bank with a hoe, an practical operation?

A. Well, you can't cut them straight up and down.

Q. You can't cut them straight up and down. Your Honor, shall I go on? It's noon.

The Court: No, we'll take a recess now. I have another matter to take up at 1:30, so this case will be resumed at 1:40, twenty minutes to two.

(Whereupon, the Court took a recess in this cause until 1:40 o'clock p.m.)

(Testimony of Arthur Anderson.)

Yakima, Washington, Monday, March 17, 1947

1:40 o'Clock P.M.

(All parties present as before, and the trial was resumed.)

Direct Examination

(Continued)

By Mr. Holman:

Q. Mr. Anderson, can you tell me the approximate number of structures on the Richardson job you had in 1943?

A. Well, I can't tell you on Richardson job, because I was just finishing that job up.

Q. Can you tell me on Murphy-Campbell?

A. Murphy-Campbell had around 500. [1962]

Q. And the Collucio job, was that a large or small job? A. That was a small job.

Q. From your inspection of the Macri job, in travelling back and forth, were you able to determine relatively how the small structures or the box structures would compare with the road or deep structures, road crossing or deep structures? It's been testified here about 536 structures, Mr. Anderson.

A. Out of about that many structures, they should have about 50 or 60 deep structures.

Q. 50 or 60 deep; that would leave, then, somewhere around 475 or so of the shallow or box structures. Now, what would be the reasonable depth, the usual depth, of a box structure, the small structure?

(Testimony of Arthur Anderson.)

Mr. Olson: Well, if your Honor please——

Q. Well, on this job.

Mr. Olson: If he wants to testify as to what he saw——

Q. Were you able to determine from your inspection on this job, Mr. Anderson, whether or not the small structures or the box structures carried depth comparable with the other small structures in the field on the Roza Project? A. Yes.

Q. Did they, or did they not?

A. They did. [1963]

Q. Then will you tell the Court approximately what would be the maximum depth for the box structure? A. Three foot.

Q. Now, that would be what, three foot of excavation, or wall, or what?

A. Well, it would be three foot of excavation.

Q. And what would be the maximum depth that an operator putting the forms together would have to reach down to fasten the fastenings of the forms together? A. Two foot six.

Mr. Olson: I think that's asking for a conclusion, your Honor, of this witness.

The Court: Overruled.

Q. Two foot what? A. Two foot six.

Q. While we're on that, Mr. Anderson, I want to hand you plaintiff's Exhibit 44, and will ask you if that exhibit has a name, in practice, what it is?

A. Well, that's a tie rod; what you call a cone type tie rod.

(Testimony of Arthur Anderson.)

Q. Do they call that a she-bolt, or not?

A. No.

Q. Will you tell the Court what a she-bolt is?

A. A she-bolt is a bolt that's hollow on both ends, screwed into this bolt in the middle, and also on the outside you got a big nut to tighten up; no cone in here whatsoever. [1964]

Q. There is no cone in a she-bolt?

A. No.

Q. And as to relative distance required for the accommodation of a union such as 44, as against a she-bolt, would a she-bolt require more or less over-all distance?

A. A she-bolt would require more over-all distance than this.

Q. Then what would be the maximum amount that a she-bolt would have to be untightened to remove with the panel?

A. Six inches.

Q. How far would it have to be untightened?

A. Six inches.

Q. And with reference to 44, this one that I handed you, what is the reasonable distance needed to untighten that for the purpose of removing a panel?

A. Oh, thickness of shiplap, an inch, an inch and a half.

Q. How's that?

A. About an inch or inch and a half.

Q. Now, that would require a distance, then, back, of an inch or an inch and a half removal, is that it?

(Testimony of Arthur Anderson.)

A. Well, you would have to pull this bolt out toward the bank an inch and a half to get it loose, yes.

Q. Then can it be removed with the panel or not, when it is separated?

A. You mean this type? [1965]

Q. Yes. A. Yes.

Q. And the she-bolt, can it be removed with the panel? A. No.

Q. How are structures staked out, Mr. Anderson? A. How are they staked out?

Q. Yes, sir.

A. Well, the Bureau of Reclamation puts a blue top on each side of the head wall.

Q. Blue top is a new term here; what is a blue top? What's it for?

A. Well, a blue top is a stake that you drive in the ground, to determine the grade, and painted blue. The Reclamation paints the top of it blue. That's the reason you call it blue top. That's the main stake to go by. Behind this you have different cut stakes, that will give you the cut of the structure, the depth you have to go.

Q. Now, does the government field force or the operator's put in the cut stakes?

A. Government.

Q. Then what other staking, if any, is there preliminary to excavation?

A. There's no other stakes.

Q. Then what is the operation with respect to excavating a hole after those stakes have been put

(Testimony of Arthur Anderson.)

in; what you told [1966] the Court this morning, or not? A. How's that?

Q. Is it the kind of an operation you told the Court here this morning? A. Yes.

Q. In excavating for a structure, Mr. Anderson, what is the practical depth with respect to the grade of the structure, that the hoe should excavate?

A. Well, you should stay about two tenths above sub-grade.

Q. That's two tenths of what?

A. Two tenths of a foot.

Q. Why?

A. Well, because the Bureau of Reclamation will not let you loosen the ground under the structure. You have to dig that out by hand.

Q. Then what is the next process called?

A. Well, after it's what we call rough graded or dug out with the equipment, we send laborers, fine graders, to fine grade the balance.

Q. I will ask you this, Mr. Anderson: Assuming that there had been no fine grading on the 400-odd box structures that you have estimated as to quantity, approximately how much man-hour work would be required to fine grade those structures?

A. Well, on our job it averaged, two men would fine grade [1967] ten structures a day.

Mr. Olson: I move that be stricken on the ground it is not responsive to the question.

Mr. Holman: I join.

The Court: Yes, it will be stricken.

(Testimony of Arthur Anderson.)

Direct Examination

(Continued)

By Mr. Holman:

Q. You mentioned on your job. We want to know what is an average man-hour requirement to fine grade those structures.

A. One man should fine grade five structures.

Q. Sir?

A. One man should fine grade five structures a day.

Q. And what would be the approximate cost of that?

Mr. Olson: That's objected to as being immaterial.

The Court: Overruled.

Q. What should that cost, in the field?

A. A day's wages, you figure \$1.30 an hour, 8 hours would be \$9.70 a day, \$9.70 for five structures.

Q. Now, you spoke of there being probably 40 to 50, I think you said, of the deep structures, or road crossing structures. What would be the operation of fine grading in that?

A. Well, it would be the same as the rest of the structures; you do all your rough grading with machinery, so your fine grading would be approximately the same.

Q. And if there are different elevations or different grades [1958] for the water, would that be done with the machine also, those different gradings, a structure with two or three different water levels?

A. Well, of course most of that is done by hand.

(Testimony of Arthur Anderson.)

Q. Most of that is done by hand?

A. With very little variation.

Q. Well, what would be the reasonable cost of fine grading a so-called deep structure, a road crossing structure?

A. I'd say \$2.00 a structure for the actual fine grading.

Q. Now, what is the practical and usual method of setting panels for forms? How's it done? Will you tell the Court?

A. How you set the forms?

Q. Yes; I'm interested particularly with respect to the distance that is required out in the excavation; how is the form set? Just tell the Court, will you?

A. Well, the way we done it is we dug the hole a foot——

Q. The Court will not allow you to tell how you did it, but will you tell me what is the practical way?

A. Well, the practical way is to dig the hole a foot bigger than the structures, build your forms in panels, haul them out, and set them up in the hole, the carpenters set them up in the hole.

Q. Well, how are they set up there?

A. Well, they are all built in panels; two men on each [1969] structure, picks up the structure, sets it in the structure, ties it with the sway brace, the inside panel is assembled and set right down in the middle, and then of course you put your whalers

(Testimony of Arthur Anderson.)

and she-bolts in, tie the form together, brace it against the bank all the way around.

A. There's been reference to strong-backs. Are those the same as whalers? A. Yes, the same.

Q. Now, do the whalers or strong-backs have to be permanently fastened to the panels, or not?

A. No, I didn't.

Q. Sir? A. I never fastened them.

Q. Well, as a practical requirement do they have to be fastened, or not? A. I don't think so.

Q. And after the concrete is poured or is placed in the structure and has cured, then what is the method of disassembling or breaking up the forms?

A. Well, you loosen your she-bolts, take your whalers out, pull your braces, pull up the form.

Q. Now, can that be done from the inside, or must it be done from the outside?

A. Well, of course you have to work on the inside and outside [1970] both.

Q. And what distance with respect to the small box structure does a man need outside to loosen the tie? A. About a foot.

Q. About a foot; and in the deep structures, such as the crossing structures, what does he need?

A. Oh, you need a little more room on a deep structure; I'd say probably two feet down along the side. You would have to have a little more room.

Q. Does he need any more distance at the base, at the floor? A. No.

Q. And on the sides you say he need a little more room?

(Testimony of Arthur Anderson.)

A. On the sides; of course, on a deep structure, your sides will naturally cave in anyhow; you can't dig them straight up and down.

Q. Sir?

A. You haven't got a straight up and down on the wall.

Q. Does the hoe excavation on each structure supply a sufficient width on the bank for the purpose of removing the forms? I say, does a normal hoe excavation on a deep structure supply a sufficient bank for removing forms?

A. Normally dug, yes.

Q. If it is dug one foot out from the base would that be true? [1971]

A. Yes.

Q. Mr. Anderson, in erecting forms—would you step here a minute, please? With reference to Exhibit 23 in the model, can you tell me whether or not you have seen any excavation in the field upon that slope of one to one?

A. No.

Q. Now, with reference to Exhibit 25, and calling your attention to the walls 25-b and 25-a, tell me whether or not the concrete is poured directly against those walls?

A. It is poured directly against the walls.

Q. Now, with reference to the raised portion on this model 25, can you tell me what that normally represents with respect to an excavation for a deep structure?

A. That will be the dirt that's been excavated from the structure.

(Testimony of Arthur Anderson.)

Q. I'll ask you whether or not it would be possible for the shovel to excavate a structure, to excavate the walls that I'm pointing to, 25-b, entirely vertical? A. No.

Q. And would it be possible in a shovel operation to have the material deposited at the close proximity to that wall as indicated on this model?

A. It is possible, but not likely.

Q. Is it practical to place a deposit there?

A. No. [1972]

Q. With reference to the portion of this model marked 25-d and 25-c, what are those, Mr. Anderson? A. That's what we call cut-off wall.

Q. And how are those made?

A. Made by hand.

Q. And with reference to 25-e, you see this little slope in here, and 25-f——

A. Also made by hand.

Q. Now, in fine grading, are those part of the normal operations, or not? A. Yes.

Q. And is there a manner of protecting those after they are fine graded, or are they left open?

A. They're left open.

Q. And how much of a performance is entailed in excavating 25-c and 25-d?

Mr. Olson: Object to that question, your Honor, as being meaningless.

Q. How much labor——

The Court: Just a moment; your objection, Mr. Olson?

(Testimony of Arthur Anderson.)

Mr. Olson: Well, he's qualified it some way now by saying how much labor. I still object to the question. I don't know how you would measure it, how much labor.

Mr. Holman: Well, he can tell me man hours.

The Court: Well, I'll overrule the objection. He [1973] may answer it, if he can.

Q. I think he can.

A. Oh, an average of—one man should dig a cut-off wall in two hours.

Q. Two hours? A. In hard digging.

Q. In hard digging, yes, sir; and how much man hour labor would be involved in straightening the wall 25-a or the wall 25-b; that would be hand labor, would it? A. Yes.

Q. Approximately how much time would that take?

Mr. Olson: How in the world can a man answer a question like that, unless he knows what he's got to start with, when the man takes the shovel.

Mr. Holman: Well, assuming that the excavation has been made with the hoe, now what would be the labor required in man hours for bringing those two walls vertical?

Mr. Olson: I make the same objection, your Honor. It is manifestly impossible for any man to answer that question.

The Court: Overruled.

A. Oh, I'd say—this particular structure was quite deep—three hours.

(Testimony of Arthur Anderson.)

Q. And how much time in your opinion in man hours would be [1974] required to fine grade 25-k, the base here? A. Oh, about an hour.

Q. One hour; and how much man hours would be required to fine grade 25-h, 25-j, 25-i, and 25-e and 25-f?

A. Oh, four hours; that's for two men.

Q. Two men, four hours, that would be sixteen man hours, then?

A. No, that would be eight man hours.

Q. Eight man hours—oh, four hours, two men, yes. Then what in your opinion is the maximum time reasonably required to make all of these fine grading operations that I have indicated, including the digging of 25-d and 25-c?

A. That's a three structure job, isn't it? Oh, twenty man hours.

Q. Twenty man hours. Take your seat again, Mr. Anderson. Mr. Anderson, is it economical and practical to remove the panels from one structure after the concrete has been cured and the form removed, onto another excavation for immediate use? A. No.

Q. What has to be done before it can be again used?

A. It's got to be hauled into the shop and overhauled, fixed up, greased, hauled back out.

Q. Now, did you say greased? [1975]

A. Yes; oiled.

Q. And is that true as a continuing operation, or not; is that always required? A. Yes.

(Testimony of Arthur Anderson.)

Q. Is there an advantage or disadvantage in having a uniform type of panel for structures, that can be accommodated by it?

A. Well, it is an advantage.

Q. Sir?

A. You're better off if you can use the same panel, sure.

Q. And what is the normal life of a panel? I'm not speaking now of the lining, of the plywood, but the normal life of a panel itself is about how much in practice; how many times should it be used?

A. I have used them up to 35 times. Of course the average would be about 20.

Q. About 20 times, sir; and with respect to the plywood lining next to the concrete, I don't know whether you've seen these panels or not, that are here; have you seen those, Mr. Anderson? With respect to those, how frequently can they normally be considered as available for use?

A. Well, of course, I never used plywood, I used Masonite all the time. You can use that several times more than you can plywood.

Q. Is there the same wear and the same deterioration to [1976] either Masonite or plywood as there is to the lumber in the panels?

A. No, there is more wear on plywood or Masonite.

Q. Yes, sir. What, in your opinion, would be a reasonable maximum quantity of lumber required for performance of the structure excavations—for

(Testimony of Arthur Anderson.)

building the forms for the concrete structures on this job, 1062, schedule 1? Do you have a figure or can you give me the basis from which you determine a figure, Mr. Anderson?

A. Well, on our job we used between——

The Court: Just a moment; it seems to me that is objectionable unless counsel wants to let it go in.

Q. I'll ask you this: In other words, you can't tell about your job, Mr. Anderson. I'm asking about this job; assuming that there are 536 structures, concrete structures, placed, and assuming that approximately 50 of them are the deep structures of the type you have been interrogated about, with respect to plaintiff's Exhibit 25, and that the remaining structures are the box type structures, the shallower structures, what would be the basis for determining the maximum reasonable amount of lumber required; how would you go about it?

A. Well, you would have to figure out how many forms you were going to build, figure out how much lumber it takes to each form, and add them all up, and see how much lumber [1977] you need.

Q. Tell me whether or not you would have to consider the number of times they would be used?

A. Well, of course, yes.

Q. And would there be a percentage of breakage or destruction that you would figure in there, or not?

A. Yes.

Q. About how would that run, how high a percentage of that?

A. Oh, I say 10 per cent.

(Testimony of Arthur Anderson.)

Q. 10 per cent for breakage or destruction, sir. Now, assuming that there were 536 structures of the types you have indicated here to the Court in which concrete had been placed on this job 1062, schedule 1, what would be your estimate of the maximum reasonable amount of lumber required, or can you tell me? I don't want just mere speculation, but if you can give me an estimate, I want it.

A. Seventy thousand feet.

Q. Did you observe the lumber being supplied for the Macri job while it was in progress, while in forms were being built in the job yard; were you at the job yard? A. I seen it, yes.

Q. What was the type of that lumber as compared with the general types of lumber at that time?

Mr. Olson: That's objected to, your Honor, as being [1978] immaterial and irrelevant, compared with lumber somebody else may have been using.

Mr. Holman: Well, I don't see why it is; there isn't any provision in the sub-contract that there should be any specific grade of lumber furnished.

The Court: Well, you asked about type of lumber, didn't you?

Mr. Olson: He asked about how it compared with the other jobs.

Mr. Holman: Generally on the other jobs.

The Court: I think he should state directly what kind of lumber he saw there. We don't know anything about the specifications on the other jobs, or what the arrangements were.

(Testimony of Arthur Anderson.)

Mr. Holman: Very well; I had in mind that compliance with the usual practice would be adequate.

Q. (By Mr. Holman): Mr. Anderson, will you tell the Court from your own inspection of the lumber in the yard at the times you saw it, and the times you saw it in the field, if you did see it in the field, whether or not that was adequate form lumber? A. Yes, it was.

Q. Yes; and did you observe the operations of the Concrete Construction Company with respect to building forms, installing forms—pardon me, with respect to building [1979] panels, installing forms, pouring the concrete, curing the concrete, and removal of the panels; did you see all those operations by the Concrete Construction Company or not, sir?

A. Yes, I saw, not all of it, but I saw lots of it, yes.

Q. Well, can you tell the Court whether or not in the operations of the Concrete Construction Company with respect to placing concrete they had adequate or inadequate equipment, in your opinion?

A. Well, they had——

Mr. Olson: If your Honor please, I think this man should be asked to state what equipment we had, and then what was the matter with it.

The Court: I think it is objectionable, what this witness regards as adequate or inadequate. That would mean very little to the Court.

(Testimony of Arthur Anderson.)

Q. Very well; will you state what equipment they had for placing the concrete, if you recall?

A. Well, they had a big mixer on the job——

The Court: Had what?

A. A big concrete mixer, Buggymobile, several trucks, plenty of equipment.

Q. Now, will you tell me whether or not that was the type of equipment adaptable to the job in question?

A. It was, in my opinion it was too expensive equipment for [1980] the type of work, too heavy equipment.

Q. Will you explain that to the Court, Mr. Anderson, why you say that?

A. Well, it's equipment equal to a million dollar job, that you could use on a big job.

Q. And with respect to capacity, what about it?

A. Had plenty of capacity.

Q. Now, did you observe the actual operations of the men of the Concrete Construction Company in placing the concrete in the structures, did you observe that?

A. Repeat; I didn't get that.

Q. Did you see the men placing concrete in the structures, the Concrete Construction Company men; did you see that?

A. Yes.

Q. Will you tell me whether or not that was done in a skillful or an unskillful manner?

Mr. Olson: Same objection, your Honor. Let the witness testify to what we did.

Q. Well, tell what they did.

(Testimony of Arthur Anderson.)

A. Well, they had plenty of men around when they poured concrete; in fact, more men than I ever had on the job.

Q. In your opinion were there more men on that work than was required, for the work being performed?

A. Of course, it took more men with the equipment that he had; it took more men to run the equipment he had than it [1981] took what I had.

Mr. Olson: Well, I ask that that answer be stricken as not responsive.

The Court: It will be stricken.

Q. (By Mr. Holman): Mr. Anderson, I'm asking you as an expert, and what you had yourself is just not a test, but I'm asking you whether or not there was an over-plus of men around the operation of placing this concrete.

Mr. Olson: That question is certainly leading, your Honor, and suggestive.

The Court: Yes, it is very leading. Sustained.

Q. Well, what was the fact?

A. There was too many men around the job.

Q. And did you observe the removal of the forms by the concrete people?

A. Oh, sometimes, yes.

Q. Can you tell me whether or not from your experience their method of removal was the usual method, or not?

Mr. Olson: Same objection, if your Honor please.

(Testimony of Arthur Anderson.)

The Court: I'll sustain the objection to that.

Q. Can you tell me what they had to do with respect to stripping forms? Did you observe that, Mr. Anderson, or not?

A. Well, I won't say I observed that.

Q. All right, sir. Now, with respect to specification 1068, [1982] did you observe the operation on that, Mr. Anderson, or not? A. No.

Mr. Holman: You may inquire.

Cross-Examination

By Mr. Olson:

Q. Did you say that you were superintendent for somebody else down there, Mr. Anderson?

A. Yes.

Q. And who?

A. Murphy-Campbell Company.

Q. And were you working for Murphy-Campbell as his superintendent at the times that you've described all this work on 1062? A. Yes.

Q. Well, now, how many times were you on job 1062?

A. Well, I had to go across that job every day, two or three times a day.

Q. And when you went across it, you went on what? A. What is that?

Q. You traveled the main county road, didn't you? A. I had to, to go over.

Q. You went up and down the main county road, didn't you? A. Yes.

(Testimony of Arthur Anderson.)

Q. These laterals run along the main county road? A. Quite a few of them are. [1983]

Q. The laterals and the disperse boxes and the delivery boxes? A. Yes.

Q. Isn't it a fact that all you could see were these road structures?

A. Not necessarily; there's other structures besides a road crossing.

Q. How many structures did you actually examine, if any?

A. I can't say I actually examined any.

Q. Matter of fact, you didn't examine any of them, did you?

A. It was none of my business; I saw them.

Q. It wasn't your business and you didn't examine a single structure, did you?

A. I seen a lot of them; I can't say I stopped and examined them, no.

Q. Isn't it a fact that the only thing you saw on 1062 is what a person would normally see driving along the road in their car? A. Yes.

Q. That's a fact, isn't it? I want to be sure about it.

A. Well, of course, I was interested in the job more than just any ordinary man that drove across it, because I might learn something, being I done the same kind of work.

Q. Yes, but the only things you saw, though, was when you were going from one part of your job, to and from work, or [1984] some place else, you

(Testimony of Arthur Anderson.)

went down the road in your car; how fast did you drive?

A. Well, at that time you couldn't drive very fast.

Q. How fast did you drive?

A. Ten miles an hour.

Q. Was the road pretty bad? A. Yes.

Q. Did it keep your attention on the road, to see where you were going?

A. I paid more attention to see what the other fellow was doing.

Q. How about the dust; was there any dust there? A. Oh, some.

Q. Did that obstruct your view any, of these structures? A. Not bad.

Q. Did you ever go out and look at any structures to see the fine grading that was done in them?

A. Oh, yes, I have.

Q. That one right along the road? A. No.

Q. What structure did you look at?

A. I don't remember just what structure, but I seen a lot of them.

Q. I'm asking you what structure you got out and examined, if any. [1985]

A. I couldn't answer you that, because I don't remember which one I stopped and looked at.

Q. How close was it to the road?

A. Probably all depends on what road. There was a thousand roads going up and down the sage brush, that we took.

(Testimony of Arthur Anderson.)

Q. When was it?

A. Oh, it was in the middle of the summer, in 1944.

Q. Middle of the summer? A. Yes.

Q. How many structures did the excavation have in it? A. How's that?

Q. How many different structure excavations was it? Was it a single structure, or two, or three?

A. Oh two, three, four.

Q. Well, was it two, or three, or four?

A. I seen lots of them. I just didn't stop at just that one; I seen several of them.

Q. Just name me one day, approximately, and what structure you looked at.

A. I couldn't do that.

Q. Well, as a matter of fact, Mr. Anderson, you didn't examine any of them, did you?

A. Well, that all depends on what you call examine. I did stop and see them, see if I could learn anything about their methods, or if my method was the best. [1986]

Q. Did they have forms in them? A. Yes.

Q. The ones you saw already had forms in them?

A. Well, both; I seen them with and without forms, seen them poured, seen them stripped.

Q. Did you ever see an excavation that had been fine graded and didn't have a structure in it?

A. Well, not to my recollection.

Q. Not to your recollection. Now, you say that a hoe cannot excavate a vertical bank, or did you say that? A. That's what I said, yes.

(Testimony of Arthur Anderson.)

Q. Now, if a hoe comes up to a location to excavate, won't the sides of that excavation be vertical if the ground will stand?

A. Not exactly, because the hoe, the bucket of the hoe, will swing as you pull it towards you, and hit the walls, or hits a rock, or something, and it will cave down so you will have a little slope on the high structures.

Q. Well, the shovel will lift straight up and down, won't it?

A. No, it will drag toward you.

Q. Well, how do they get it up out of the ground?

A. They drag toward you, and picks it up; it drags it toward you, you have quite a flat slope.

Q. Well, Mr. Anderson, that shovel when it comes up on the machine side of the excavation, it will come right straight [1987] up in the air?

A. That's all right, but you can't put your machine right at the edge of the structure.

Q. It can lift it straight up?

A. Yes, when the hoe is pulled up as far as it comes, but you're not digging in that position.

Q. No, but when you get your shovel full, and this type of shovel you were using, you can lift it straight out of the hole, can't you, full of dirt?

A. No; no.

Q. Can't do it? A. No, you can't.

Q. Now, when you were down and looked at this Exhibit 23, you noticed several different sub-grades, did you not? A. Yes.

(Testimony of Arthur Anderson.)

Q. How many did you notice?

A. Oh, there was four; three or four.

Q. I wonder if you would step down there just a minute. Now, if you were going to excavate the excavation, exhibit 25, with a hoe, what is the deepest excavation you would make, at 25-i, 25-h, 25-k, or j, or what?

A. The deepest?

Q. Yes. A. 25-k.

Q. You would excavate 25-k with a shovel?

A. Yes.

Q. And how wide would you do it with reference to the bank, 25-b?

A. Well, that all depends on the size of that particular structure. What size box was it?

Q. Well, assuming that this is an excavation which is six feet six inches deep.

A. Six foot six inches deep, and how wide? How big is the box?

Q. Well, my question is, Mr. Anderson, take your wall, 25-b, could you excavate that wall with a shovel?

A. No.

Q. And how close to it could you come?

A. Approximately six inches.

Q. Approximately six inches?

A. Depends a lot on the material of the ground.

Q. Well, can you answer that question without knowing the ground?

A. Six inches, on this kind of ground.

Q. And would you excavate the 25-i at a different level than 25-h and 25-j, with your shovel?

A. No, I don't think I would; in this case I would use them all the same level.

(Testimony of Arthur Anderson.)

Q. All the same level; and then your fine graders would have to come in, would they not? [1989]

A. Yes.

Q. And the length of time it took them to excavate or hand grade or fine grade one of these excavations would depend entirely upon how rough the hoe excavated it, wouldn't it? A. Yes.

Q. And when you estimated twenty hours, I think you said, for fine grading, did I understand you to say it would take approximately twenty man hours to fine grade a hole of this type? A. Yes.

Q. What type of a rough excavation were you assuming in your twenty hour figure, Mr. Anderson?

A. Well, I assumed that you excavated to within two tenth of sub-grade.

Q. All around the structure?

A. All around the structure; of course, this one you will have more, this 25-h.

Q. Now, you wouldn't say that you could fine grade that structure, then, exhibit 25, in twenty hours, would you? A. Yes.

Q. Well, you can't, can you, Mr. Anderson, excavate that within two tenths of grade, with a shovel? A. All but 25-h.

Q. Are you assuming that 25-i and 25-j are the same elevation? [1990] A. Practically.

Q. You're assuming that they are, practically; how much difference do you think there is between them? A. Well, as a rule——

Q. No, how much difference in sub-elevation did you figure on this structure in answering counsel twenty hours? A. Four inches.

(Testimony of Arthur Anderson.)

Q. Figured four inches; and how much difference in elevation did you figure between 25-h and 25-i, in giving your twenty hours? A. A foot.

Q. A foot; and how much cutting did you figure on bank 25-b, in inches or feet? A. Six inches.

Q. Six inches, all the way down? A. Yes.

Q. Pardon? A. Yes.

Q. So you figured a vertical wall which had to be excavated laterally six inches? A. Yes.

Q. And what did you figure about the rough excavation being in proper alignment?

A. I don't quite understand what you mean.

Q. Well, did you figure that the rough excavation was in [1991] the place where it was supposed to be? A. Yes, of course.

Q. And if any of those things weren't the fact, that would materially change you estimate of time?

A. Yes.

Q. All right; you can go back to the stand. Now, I want to know again, Mr. Anderson, if you ever got out of your car and went out over specifications 1062? A. Yes, I did.

Q. And you did that how many times?

A. Oh, quite often; I couldn't say just how many times.

Q. And you did that while you were superintendent and running the entire work of the Campbell crew? A. Oh, I had foremen.

Q. Pardon? A. Yes, I did.

Q. You said yes what?

A. I did stop when I was working on that job.

(Testimony of Arthur Anderson.)

Q. How did you see the banks of these excavations that you examined, were they vertical, or sloped, or how were they?

A. Well, I say they were quite straight up and down. They were sloped some, of course, yes.

Q. You say they were quite straight up and down? A. Yes.

Q. Now, if after the shovel finished the excavation roughly, [1992] if the bottom portion of the excavation was dug out by hand, that would take away much of the slope that was left in the excavation by the shovel, wouldn't it?

A. If the bottom was dug too deep?

Q. No. If the lateral at the bottom of the excavation, if it was widened out at the bottom of the excavation after the shovel finished it, that would make the walls then practically vertical, wouldn't it?

A. I don't quite understand what you mean.

Q. Now, you say that a man should be able to fine grade five structures per day? A. Yes.

Q. What type of a structure do you have in mind, what type that a man should excavate five of a day?

A. Well, I had in mind an average structure, weirs.

Q. Well, how deep and how wide?

A. Four by four.

Q. A square?

A. Four by four; square, yes.

(Testimony of Arthur Anderson.)

Q. Just a square four by four excavation?

A. That's the average structure.

Q. And one elevation; did you ever go over the lay-out plans on 1062? A. No, I did not.

Q. Well, you don't know, do you, all the different types of [1993] structures that they had on 1062? A. No, I don't.

Q. So you wouldn't tell this Court that one man should be able to hand grade or fine grade five of those structures a day?

A. Taking it for granted that their job was like ours.

Q. Pardon?

A. I took that for granted, that their job was the same as ours, practically the same.

Q. So what you were referring to in your answer, you were referring to five structures of the type that you had on your job, and you were taking a structure that was four feet by four feet, with all one grade; just an ordinary square hole?

A. Yes.

Q. After looking at this exhibit 25 again, did you say that was a three structure hole?

A. No, that's a four structure, if I remember right.

Q. As a matter of fact, it is only two, isn't it?

A. Yes, it is two.

Q. Pardon? A. Two.

Q. What did you mean when you said four?

A. Well, there's so many different types. I was thinking of a weir and other outlets. It's pretty

(Testimony of Arthur Anderson.)

hard to keep track [1994] of all those different types of structures they have.

Q. Well, it is just two, isn't it? A. Yes.

Q. And you still think that that could be excavated, those two structures, in twenty hours?

A. That should be excavated in twenty hours, yes.

Q. Let's see, that's two structures in twenty hours; that would be ten hours to one structure, wouldn't it?

A. Yes, but that's the hardest type of structure that you've got on the job there.

Q. You say this is the hardest type?

A. That's right.

Q. As a matter of fact, this is a typical structure out there on 1062, isn't it?

A. No; outside of these road crossings, this is one of the deepest structures you've got out there.

Q. Did you ever see any fine graders at work on 1062?

A. Oh, I suppose I did, yes. I really didn't pay much attention to them.

Q. Well, you saw the hoe working, didn't you?

A. Yes.

Q. You saw that? A. Yes.

Q. Now, the next thing would be the fine graders?

A. That's right. [1995]

Q. Now, did you or didn't you see them working? A. I saw them working.

Q. You saw them working too; how many times?

A. I wouldn't say how many times, because I can't.

(Testimony of Arthur Anderson.)

Q. Who was with you?

A. Who was with me? Oh, most of the time I had to drive alone.

Q. Who did you talk to, if anybody?

A. Oh, I talked to quite a few of the guys, lots of the fellows, I don't remember; talked to Darcy several times.

Q. When did you talk to Mr. Darcy?

A. Practically every day.

Q. Practically every day?

A. That is, when he was there.

Q. Now, you say you also saw the Concrete Construction Company putting in the forms?

A. Yes.

Q. And you saw them pouring concrete?

A. Yes.

Q. You saw them taking the forms out?

A. Yes.

Q. Now, how much room did you say they should have, how much lateral clearance, in one of these excavations?

A. That they have on their job?

Q. No, how much should you have? [1996]

A. A foot.

Q. A foot from what?

A. A foot at the bottom of the structure, at the base of the structure, you should have a foot clear.

Q. Well, from what?

A. From the concrete; from the outside wall.

(Testimony of Arthur Anderson.)

Q. From the outside wall at the foot of the structure, and how much from there on up, how about the bank?

A. Well, of course, you might have—I like to have it just as tight as possible.

Mr. Olson: I move that be stricken, your Honor, as not being responsive. I'm asking how much you should have.

The Court: Well, it will be stricken.

Mr. Holman: I submit it is his opinion.

The Court: Well, I think the question is what should be required or should properly be there, not what he likes.

Witness: Well, I'd say at the top a foot and a half.

Q. How thick a panel do you put on this concrete? A. What's that?

Q. How thick is your outside panel?

A. Well, let's see, two by four, and ship lap, that would be four and three quarter inches, four and a half.

Q. And did you have to use a whaler on them too? [1997] A. Yes.

Q. And what thickness is that?

A. Two by four.

Q. And how much thicker will that be?

A. It would be eight and a half inches.

Q. Now, I believe you said you didn't tie your forms together with any bolt or tie rods?

A. We tied them together with she-bolts.

Q. Pardon? A. We used she-bolts.

(Testimony of Arthur Anderson.)

Q. And how much more space does that require?

A. About six inches.

Q. And that requires, then, an over-all space of how much?

A. About a foot.

Q. Now, when you take your she-bolt out of your form, can you take it out in six inches?

A. Yes.

Q. And then how do you get your outside panels off?

A. Just pick them right up, straight up.

Q. Just pick them right straight up?

A. Yes.

Q. How about the panels after they were taken out; I believe you said it was ordinary practice to take them back to the yard each time and fix them?

A. Yes. [1998]

Q. What would you be fixing about them?

A. Well, they've got to be cleaned, scraped, and got to be oiled, and once in a while a board will be cracked, and they'll replace a board.

Q. Did you have to re-oil them after each time they've been used?

A. Yes.

Q. And what was the purpose of the oiling?

A. So that a form would slip from the concrete; so they don't stick to the concrete.

Q. Well, then, why did you have to scrape them?

A. Well, some would stick to them. Before you oil them you scrape them so your oil would take effect.

Q. What is the practical difficulty of doing that in the field?

(Testimony of Arthur Anderson.)

A. You're out in the field, the sage-brush; you haven't got no level place to lay them down; you can't clean them.

Q. Why?

A. Because you haven't got no place to work on them.

Q. You mean you haven't got room enough?

A. There's too much sage-brush out there.

Q. You mean to say you couldn't re-oil those forms out in the field?

A. Probably could, yes, if you wanted to.

Q. There would be no difficulty about it all, would there? [1999] Would it cost you a lot more money?

A. Yes, it would.

Q. What is the difficulty about it?

A. Well, you've got sage-brush and all kinds of stuff laying around. You got no place to work, like you should.

Q. What have you got laying around?

A. Well, you're got a pile of dirt, you've got sage-brush three foot high; that's about all. That's enough.

Q. Couldn't you lay those panels on your truck bed and oil them?

A. I couldn't afford to have the truck sewed up that way.

Q. Pardon?

A. I couldn't afford to have truck tied up that way.

Q. How long would it take to oil them?

A. Structure like that, quite a few forms; I'd say a couple of hours.

(Testimony of Arthur Anderson.)

Q. And how long to clean them?

A. Well, that's oiling and cleaning combined.

Q. How long would it take you to haul them back to the yard and out to the next structure, assuming you have an average haul about nine miles?

A. Well, I would say about an hour, hour and a half.

Q. And another hour and a half to get them back?

A. No, about three quarters of an hour to haul them in, and [2000] three quarters of an hour to haul them back.

Q. I'm sorry, I didn't understand you; three or four what?

A. Forty five minutes hauling them in, and forty five minutes hauling them back.

Q. Well, now, do you know the average depth of the structures on 1062, from your own knowledge?

A. No.

Q. And when you gave your testimony on that, you again were basing that on the job that you worked on?

A. That's right.

Q. And isn't that true, Mr. Anderson, of most of the descriptive testimony which you gave as to dimensions, that it was based on the excavations and structures that you worked on on your other jobs?

A. That's right.

Q. And you don't know how many deep structures there were on 1062?

A. No.

(Testimony of Arthur Anderson.)

Q. You again were basing that on the Murphy-Campbell job that you worked on?

A. That's right.

Q. And the cost that it would take to excavate a structure by hand grading would depend entirely, would it not, on the type of rough excavation that was done? [2001]

A. Yes.

Q. And your figures are based on the rough excavation being approximately two tenths of the final grade that is required by the lay-out plans?

A. That's right.

Q. And if there were not such rough excavations done, why, then your figures would not be approximations on this job?

A. No, of course not.

Q. Now, you say you saw some of the lumber that was used on this job?

A. Yes.

Q. Do you know when you saw the lumber?

A. Oh, I'd say during the summer; I would say in June, something like that.

Q. Where did you see it, Mr. Anderson?

A. I saw some of it already made up in forms, and I saw some at their shop.

Q. How many times were you at the yard?

A. Well, I came by there quite often, quite regular, three or four times a week.

Q. And you say the lumber was all right. Showing you plaintiff's Exhibit 29, Mr. Anderson, you may examine it if you wish, would you say that that was proper or adequate form lumber, as the term is used?

A. It is all I could get at that time.

(Testimony of Arthur Anderson.)

Q. And your answer is that that is adequate?

A. That's all I could get. It's not adequate, but that's the best we could get at the time.

Mr. Olson: I ask that both those answers be stricken, your Honor, as to what he could get.

The Court: I don't believe they're directly responsive. They will be stricken.

Q. I'm asking you, Mr. Anderson, is this the type of lumber that you saw? A. Yes.

Q. Both in the yard and the Macri office?

A. I would think so, yes.

Q. And this is Exhibit 29, and that's the type of lumber that you refer to that you saw there? Is your answer yes? A. Yes.

Mr. Hawkins: I would like to have the record show that the witness inspected the boards on the outside of that bundle, that he was not shown the boards on the inside of the bundle, the bundle was not opened for his examination.

The Court: Yes, the record may show that.

Mr. Olson: Well, let's cut it open and let him look at them all, then. Will you step down and examine these, if it is necessary to, Mr. Anderson, or can you tell without taking them apart? [2003]

Mr. Holman: I object to——

The Court: That isn't necessary, to lay them all out that way. Have you made your examination?

Witness: Yes.

The Court: The record may show now that he has looked at each board.

(Testimony of Arthur Anderson.)

Cross-Examination

(Continued)

By Mr. Olson:

Q. Now, you say that you also examined the Concrete Construction Company's equipment on the job?

A. Yes.

Q. And you thought that their equipment was too good for that job, is that what you meant to say?

A. That's right.

Q. It was entirely adequate, was it not?

A. Well, I couldn't use that equipment.

Q. Pardon?

A. I couldn't use that kind of equipment on that kind of a job.

Q. What was the matter with it?

A. Well, it is too big.

Q. What was too big?

A. The mixers, the mixer especially cost too much money to move it up from structure to structure.

(Whereupon, photograph of transit mixer was marked plaintiff's Exhibit No. 90 for identification.) [2004]

Q. I'll show you plaintiff's identification 90, and I will ask you if you recognize that piece of equipment?

A. Yes.

Q. And on whose job was it?

A. Murphy-Campbell.

Q. And this is a transit mixer, mobile, is it?

A. That's right.

(Testimony of Arthur Anderson.)

Q. Do you remember this occasion?

A. Yes.

Q. It shows your machine badly——

A. Stuck in the mud.

Q. ——stuck in the terrain out there, doesn't it?

A. Yes.

Mr. Olson: We offer plaintiff's identification 90 in evidence.

Mr. Holman: No objection, your Honor.

The Court: Admitted.

(Whereupon, plaintiff's exhibit No. 90 for identification was admitted in evidence.)

Q. (By Mr. Olson): Now, that wasn't any mud there, was it, Mr. Anderson? A. How's that?

Q. You said something about "stuck in the mud"; that wasn't mud, was it?

A. Yes, it was. [2005]

Q. It was mud? A. Yes.

Q. What part of the year was this?

A. It was in summer time.

Q. In the summer time? A. That's right.

Q. And you say that was mud? A. Yes.

Q. Well, how do you explain that?

A. Well, sir, they turned the water on in the main canal and coming down the pipe line; they turned it in before the job was completed. The head gate at the main canal leaked, coming down the pipe line, and naturally it got soft there, and the truck driver didn't see it, and backed right into the thing. That happened once in the years.

(Testimony of Arthur Anderson.)

Q. Pardon?

A. That happened once during the time of construction.

Q. That's a Bureau of Reclamation picture, is it not?

A. That's right; I got one just like it.

Mr. Holman: I'm sorry, I didn't get that last.

Q. (By Mr. Olson): He said he had one just like it. Now, you say we had more men than what we needed?

A. Oh, I didn't say you had more men than you needed; you had more men than I had on my job, for pouring. [2006]

Q. Oh, then, you didn't intend to indicate to this Court that the Concrete Construction Company had more men on the job than they needed? A. No.

Q. Pardon? A. No.

Mr. Olson: That's all.

Cross-Examination

By Mr. Hawkins:

Q. Mr. Anderson, was that a transit mixer shown in that last picture, exhibit 90, is that right?

A. Yes.

Q. If you have transit mixers on the job you do not need as many men, is that right?

A. That's right.

Q. And if you have one of these big Mixomobiles you need more men? A. That's right.

(Testimony of Arthur Anderson.)

Q. So it was the having of this Mixomobile that required more men to be on the job?

A. That's right.

Q. That would make it a more costly operation?

A. I think so, yes.

Mr. Hawkins: That's all.

Mr. Ivy: No question. [2007]

Redirect Examination

By Mr. Holman:

Q. Mr. Anderson, you told counsel that you talked with Darcy several times, and talked to him practically every day when he was there. Was Mr. Darcy absent from the job, to your knowledge, was Darcy away from the job, or not?

A. No, I saw Darcy on his job.

Q. I was wondering what you meant by saying when he was there. Do you mean just when he happened to be there?

Mr. Olson: That's certainly getting into the leading field. The witness has answered his question, and now he's suggesting something else.

The Court: Have you a question? Go ahead with your examination. I assumed he meant during the time Mr. Darcy was working on 1062.

Q. That's what I was trying to find out.

The Court: I mean during the time he was employed there. He wasn't there throughout the whole construction.

Q. Is that what you meant, Mr. Anderson?

A. Yes, that's what I meant.

(Testimony of Arthur Anderson.)

The Court: Am I right about that?

A. Yes.

Q. Mr. Anderson, can you tell me from your experience whether there is a general uniformity of box structures [2008] and road structures and similar structures on the different jobs in the Roza Project?

A. Well, as far as I know they're most of them pretty much the same.

Q. And is that true with respect to 1062, schedule 1, compared with the other jobs? A. Yes.

Q. And in answering me on direct examination did you have that in mind, sir?

A. What's that?

Q. And in answering me on direct examination did you have that in mind, the uniformity?

A. Yes.

Mr. Holman: That's all.

Mr. Hawkins: I neglected to ask Mr. Anderson about these boards down here; that wasn't followed up. I wonder if the clerk would mark these boards here?

(Whereupon, three of the boards in Exhibit 29 were marked 29-a, 29-b, 29-c.)

Recross-Examination

By Mr. Hawkins:

Q. Mr. Anderson, with respect to exhibits 29-a, b and c, which were the boards inside the bundle that you first examined——

(Testimony of Arthur Anderson.)

Mr. Olson: I object to that, your Honor. It is not a true statement. Those are not the boards that were [2009] on the inside of the bundle.

Mr. Hawkins: Would you state that they were all on the outside, counsel?

Mr. Olson: I won't state they all were, but I'll state that 29-b was on the outside of the bundle.

Q. (By Mr. Hawkins): With reference to boards 29a, b and c, that's these three right here, counsel states 29-b was on the outside, I take it he concedes a and c were on the inside, is that right?

Mr. Olson: No, I don't concede it. I don't remember it. I remember board b was on the outside.

Q. (By Mr. Hawkins): In any event, with respect to a, b, and c, is that typical of the lumber that you saw out on the Macri job?

A. It's poorer than I saw there.

Q. It is poorer than you saw?

A. Yes.

Mr. Hawkins: That's all.

Redirect Examination

By Mr. Holman:

Q. Did you see any used lumber out there? Was Macri supplying used lumber, or was it new lumber, do you know?

A. It was mostly new lumber.

Q. New?

A. Yes.

Q. You say mostly new. Well, could you tell whether or not [2010] it was lumber that had been used on a job, that is, covered with cement or otherwise, or not?

(Testimony of Arthur Anderson.)

A. No, I couldn't tell; I didn't pay any attention to it.

Q. Did you see any what you would call used lumber? A. How's that?

Q. Did you see any that you would call used lumber, as against the usual lumber that was being furnished—second hand lumber? A. No.

Q. You saw second hand lumber, or saw none, which?

A. I saw second hand lumber that they remodeled forms with, sure, but you get that all the time; I didn't pay no attention to it.

Mr. Holman: Would you read that answer?

(Whereupon, the reporter read the last previous answer.)

Q. In other words, may I understand, when you say second hand lumber, you mean lumber that has been used before on the job, or elsewhere?

A. Lumber that's been used before on the job.

Mr. Holman: That's all.

Recross-Examination

By Mr. Olson:

Q. Were you superintendent on this Murphy-Campbell job, Mr. Anderson? A. Yes. [2011]

Q. Isn't it a fact that your bonding company had to take over that job?

Mr. Holman: I object to that, your Honor, as wholly outside the issues.

(Testimony of Arthur Anderson.)

The Court: Sustained.

Mr. Olson: That's all.

The Court: Any further questions?

Mr. Hawkins: No further questions.

(Whereupon, there being no further questions, the witness was excused.)

The Court: The Court will recess for five minutes.

(Short recess.

(All parties present as before, and the trial was resumed.

(Whereupon, part of Macri weekly payroll reports, week ending August 16, 1944, to week ending December 13, 1944, was marked Defendant Macri's Exhibit No. 15-a for identification.

(Whereupon, summation of items 12, 13 and 15 and 16 on specification 1068 was marked defendant Macri's Exhibit No. 91 for identification.)

ELIZABETH CALLAHAN

a witness called on behalf of the defendants Macri, resumed the stand and testified further as follows:

Direct Examination

By Mr. Holman: [2012]

Q. Miss Callahan, have you at my request compiled the charges applicable to specification 1068, contract 12r-14996?—

A. Yes, I have.

(Testimony of Elizabeth Callahan.)

Q. —involved in this action, for the purpose of determining, for the purpose of setting forth, the total actual cost of performance of that job—

A. On concrete.

Q. —with respect to item 12, concrete in structures, item 13, placing re-enforcement bars, item 15, erecting timber in structures, and item 16, installing gates and miscellaneous metal work?

A. Yes.

Mr. Hawkins: Specification what?

The Court: 1068. I take it, Mr. Holman, that would have been involved in Mr. Schaefer's contract had he performed it, under 1068?

Q. That's correct, your Honor. That's correct, isn't it? A. Yes.

Q. Now, handing you what has been marked Macri's identification 91, is that the summation of the expenditures? A. Yes, it is.

Q. With reference to the first item, "Labor November 22, 1944, to November 15, 1945, inc."; does that mean inclusive? [2013] A. Yes.

Q. \$49,323.62; from where did you get that?

A. It is from the daily reports of the superintendent, and the payrolls.

Q. The payroll reports? A. Yes.

Mr. Hawkins: Your Honor, apparently that's going into the record, that figure, as evidence of that cost.

Mr. Holman: Well, leave the cost items out; no objection to striking that item as to figure; I just want to identify the entry.

(Testimony of Elizabeth Callahan.)

The Court: This is just preliminary, I assume.

Mr. Holman: I'll not quote figures.

Mr. Hawkins: From the way it was going in, it was going into the record as the figure, as evidence.

Mr. Holman: I have no objection to having the figure stricken.

The Court All right, it will be stricken out.

Direct Examination

(Continued)

By Mr. Holman:

Q. All right, then the second item, payroll taxes, four and a half per cent of the above, is that comprised of the next three items below?

A. The next four.

Q. The next four items; would you read those off, please?

Mr. Olson: Pardon me, do you have extra copies of [2014] that? A. I have.

Mr. Holman: Do you have one Mr. Olson can follow?

Q. (By Mr. Holman): The four items there, if I may lead, counsel, I can save a lot of time on identification, are the four classifications that you've shown, is that correct? A. That's right.

Q. Then the next item, item 3, rental of equipment, H. H. Walker, Inc., how was that item determined?

A. From the information given to me by the superintendent and by Mr. Macri, the portion of

(Testimony of Elizabeth Callahan.)

the equipment that was applicable to concrete.

Q. And do you have any bills in payment of that?

A. Oh, yes, I have the bills and the cancelled checks.

Q. Fourth, the rental of equipment owned by Macri and Company, A, one GMC two-ton truck with flat bed, eight months; how did you arrive at that?

A. The time is given to me by the superintendent, and the price is according to my O.P.A. book.

The Court: Is this the first time Miss Callahan has been on the stand?

Mr. Holman: No.

The Court: Oh, she was identified as Mr. Macri's bookkeeper; I wasn't sure about that. [2015]

Mr. Holman: Yes, sir, in connection with this identification.

Q. (By Mr. Holman): The next item, one three quarter horse power vibrator, what does that H.P. stand for? A. Horse power.

Q. And the words "eight months" and added figure, where did you get that information?

A. The time is from the superintendent; the price is from the O.P.A.

Q. Is that true of the next item also, swing saw?

A. Yes.

Q. Taking item 5, Martin & Son, ready-mixed concrete, from where did you get the figure for that item? A. That's his contract price.

(Testimony of Elizabeth Callahan.)

Q. Do you have the bills or anything for that?

A. I have the bills and the cancelled checks.

Q. And Item 6, Potlatch Yards, Inc., nails and wire, etc., is your answer the same with respect to that?

A. I have the bills and checks.

Q. Item 7, Seattle steel company, where do you get the figure for that?

A. From the Seattle Steel bills; part of it is rental and part of it is purchase.

Q. And this item 8 is a purchase item, or rental item?

A. 8 is purchase. [2016]

Q. Yes; then item 9, Yakima Hardware, wire and miscellaneous, is your answer the same as to that?

A. Yes.

Q. From their bills, is that correct?

A. That's right.

Q. Item 10, Pioneer Sand and Gravel Company, Sealcure and freight.

A. I have the bills and checks.

Q. Item 11, Northwest Engineering Company, rental, \$781.21—strike the figure, please; where did you get that from?

A. From the bills.

Q. Item 12, Ray Shingshang, placing re-enforcing steel, where did you get that figure?

A. That's the amount of his actual pay checks on that particular job.

Q. 13, unloading cement from cars and placing on the job, Glen Gentry and Harvey Hofsted, where did you get that?

A. That's from the bills and checks.

(Testimony of Elizabeth Callahan.)

Q. Then the total cost to Macri is the total of the items you have indicated? A. Yes.

Q. And the next item, sub-contract price on quantities and Bureau final estimate number 16, you got those figures from where?

A. From the final estimate 16. [2017]

Q. Yes; and then is it true that you deducted that item from the total of the items above?

A. That's right.

Q. Now, I see you have a line drawn through there, and below that the sub-contract price on quantities, and the Bureau final estimate, the yardage, and the price per yard. Where did you get that price per yard?

A. Well, that's an explanation of my figure, as to how I arrived at it; that's from final estimate 16.

Q. Where did you get your price per yard?

A. From the sub-contract.

Q. And is your next item with respect to pounds of re-enforcing bars from the same source?

A. That's right.

Q. And is your next item, item 15, 17.184 MFDB at \$35.00, what is that?

A. That's thousand feet board measure.

Q. I didn't hear you.

A. It is board measure.

Q. Yes, and the price you got from where? Is it a sub-contract price?

A. Yes, it is a sub-contract price.

Q. Or is it a price that you have off of bills? I don't understand what that item is. Passing that

(Testimony of Elizabeth Callahan.)

for a minute, Miss Callahan, the next item, pounds installed, gates, at [2018] 3 cents per pound, where did you arrive at that? A. The sub-contract.

Q. Do you wish to make any further inquiry as to identification, counsel?

Mr. Hawkins: I have no inquiry at this time.

Q. Now, taking the first item, Miss Callahan, I believe you said that was from the payroll?

A. Yes.

Q. And handing you plaintiff's identification 21 for identification, I'll ask you whether or not the items in 21 were prepared by you? Just check it through for handwriting; as the ones furnished the government. A. Must be.

The Court: Which one is that?

Q. That's Macri's identification 21, your Honor.

A. Must be; it's my handwriting.

Q. That's your handwriting? A. Yes.

Q. And the duplicate of that did you keep, did you retain? A. Yes.

Q. And was it from that duplicate that you got that? A. That's a carbon copy.

Q. What was the total amount of that payroll?

Mr. Hawkins: I object to that, your Honor. I don't think it's been properly established. Is this exhibit [2019] in evidence, Macri's 21?

The Clerk: No, it is not. It is an identification.

Mr. Hawkins: Hasn't been properly qualified.

Mr. Holman: I will offer in evidence at this time Macri's identification 21 in its entirety, your Honor.

(Testimony of Elizabeth Callahan.)

The Court: Is that Mr. Macri's payroll on 1068?

Mr. Holman: In its entirety, your Honor?

Mr. Olson: If your Honor please, on behalf of the use plaintiff we object to its introduction on the grounds that at this time it is wholly immaterial, irrevelant, and incompetent, for the reason that as against Mr. Schaefer there is no foundation laid for its introduction into evidence. The testimony to date shows that Mr. Macri unlawfully took over the performance of 1068 without ever having tendered performance on his part of the things that were necessary, and a condition precedent to any obligation upon Mr. Schaefer to commerce work. The testimony, all the testimony, is that the fine grading did not commence until the 5th day of February, 1945, on 1068, and at that time Macri and Company had already taken over the building of forms and the performance of the work called for in the sub-contract. The testimony is uncontradicted that on November 30, when they served notice [2020] upon us to proceed, and upon January 3, when they notified us we were in default, there wasn't any place upon which Concrete Construction Company could work, and it goes without saying, your Honor, that you have to have an excavation fine graded before you can start assembling forms or pouring concrete. Now, there has been no testimony whatsoever that they ever got in that position and then gave the Concrete Construction Company an opportunity to perform 1068. The testimony, all of it, is, your Honor, that the Macri

(Testimony of Elizabeth Callahan.)

Company took over the building of forms and the assembling of panels before there was any holes ready for the Concrete Construction Company to work in.

Mr. Holman: That, your Honor, I submit is a matter of law to be argued to the Court with due respect to the exhibits that are in, and regardless of that, this is a factual matter that has to be proven, and if counsel's position is that your Honor must pass upon that before there is any evidence to be considered with respect to 1068, then that's one question, but your Honor has already admitted a great deal of evidence with respect to 1068, and I think this is in due course of proof with respect to the position of the cross-complainant Macri as against the cross-defendants Schaefer in 1068.

The Court: Well, it would be material if there is [2021] an issue as to whether or not Mr. Schaefer breached his contract with the Macri Company with reference to 1068. I assume that still is your contention?

Mr. Holman: Oh, yes, it is, your Honor.

The Court: That the breach was on the plaintiff, and without fault on yourself?

Mr. Holman: Entirely.

The Court: And if evidence is to be introduced on that point, then this would be material, of course. My recollection of the testimony so far, as far as the factual situation is concerned, is as stated by Mr. Olson, that there isn't any evidence, that is, that the excavations weren't ready for any operation

(Testimony of Elizabeth Callahan.)

by Mr. Schaefer at the time this notice was given; that's the evidence there is so far, as I recall it.

Mr. Holman: Well, with respect to Macri's case that's probably a correct position, your Honor. If this is premature then I will withdraw Miss Callahan from that phase of it, because we will go into that in its entirety, but I frankly had figured on——

The Court: Well, if it is just a question of order of proof, I don't care about that, you can put it in now; I wouldn't want to have a whole lot of evidence go in here that isn't going to be useful in determining the controversy, or that the Court wouldn't have occasion [2022] to use.

Mr. Holman: The thing that suggests itself to me, your Honor, is one that as we progressed, we passed, and that's the letters of Mr. Nelson in connection with his deposition, which are quite pertinent in connection with 1068 too, and I wish those to be considered too by the Court. They have not been offered in evidence yet.

The Court: You mean Mr. Nelson in his letters to Macri stated a situation that would indicate that Mr. Schaefer breached his contract on 1068?

Mr. Holman: Indicates with respect to the progress, at least, your Honor, on 1062 as affecting 1068, yes.

The Court: Well, those letters haven't been offered, or at least the offer wasn't pressed, so that they're not before the Court, the letters are not, at this time.

(Testimony of Elizabeth Callahan.)

Mr. Holman: Well, I'd like at this time to offer them, then, your Honor, and have Miss Callahan stand aside, because this is a matter that naturally will depend on the determination, or at least a showing to the court that there was a breach of contract, and that is part of the reasoning.

The Court: All right.

Mr. Holman: I have one question I would like to ask Miss Callahan while she is on the stand, your Honor. [2023]

Direct Examination
(Continued)

By Mr. Holman:

Q. Miss Callahan, did you at my request make a copy of the portion of Macri's Exhibit for identification 21 covering the weeks ending August 16, 1944, to and including December 13, 1944, as evidenced by Macri's identification 15-a?

The Clerk: Mr. Holman, you said Macri's 21.

Mr. Holman: Identification, isn't it?

The Clerk: Then this should carry 21-a, instead of 15-a; 15-a refers to 1062. Is this part of 1068?

Mr. Holman: Oh, I beg your pardon, yes, Macri's 15, instead of 21. Mr. Taylor, can you change that?

Witness: Yes, it is.

Q. And is that a full, true and correct copy of that portion of the payroll?

A. Yes, it is an exact copy.

Mr. Holman: This, your Honor, is offered in evidence at this time as encompassing the period of

(Testimony of Elizabeth Callahan.)

employment while the witness Stickney was in charge of the Macri operations. Your Honor will recall that Mr. Stickney partly checked it, and then on counsel's objection did not continue.

The Court: What is that identification?

Mr. Holman: 15-a, your Honor.

The Court: And that's a section of the Macri payroll [2024] on 1062?

Mr. Holman: On 1062, yes. I'd like to offer it in evidence for the purpose of being considered with the testimony of the witness Stickney.

Mr. Olson: For what purpose, do you say?

Mr. Holman: Considering it with the testimony of the witness Stickney. It carries his name throughout, and the witness already, your Honor, has identified into the evidence the writings on the original payroll for the week ending October 4, 1944, and the week of October 11, 1944, and the week of October 18, 1944, and the week of October 25, 1944, and the week of November 1, 1944, with respect to truck hire, as covered by his testimony.

The Court: That was identified by the witness Stickney?

Mr. Holman: Yes, your Honor, these pages, this portion of the payroll, was identified by the witness Stickney as covering the period that he was employed in the position he so testified about.

Mr. Olson: Your Honor, our objection is also to the introduction of Mr. Macri's payroll. Mr. Stickney, your Honor will recall, while he was one of Macri's superintendents, he was called by the

(Testimony of Elizabeth Callahan.)

plaintiff as a witness. I don't see what counsel has in mind, but I don't see how Mr. Stickney having testified places in evidence [2025] that portion of the payroll covering the time he was Macri's superintendent. Obviously anything that's in this document now offered as a part of Macri's case are self-serving statements. Frankly, I don't know what it is offered for. If it is offered to show cost, then it is just as objectionable as the whole payroll, what it cost Mr. Macri to perform—this is on 1062?

Mr. Holman: 1062.

Mr. Olson: Then I just don't understand the function of it, your Honor. I object to it as being immaterial so far as any issue that I know of or can think of is concerned.

Mr. Holman: Well, it does show the portion of the time that Mr. Stickney served. Now, this is on cross-examination of Mr. Stickney, their witness, and he identified those pages and was comparing this particular 15-a with that at the time when he stopped on counsel's objection and your Honor's suggestion that he didn't have to, and that has been done now, and I think it is entitled to go in evidence as Macri's showing of the man power that he had during that particular time when he was there. It is a matter of defense.

The Court: Let me see that. This witness now on the stand identified this as part of the Macri payroll?

Witness: During the time Mr. Stickney was there. [2026]

Mr. Hawkins: Isn't that a copy?

(Testimony of Elizabeth Callahan.)

Mr. Holman: A true and correct copy, yes.

The Court: It is a copy. Is there any objection made to it on the ground that it is a copy, rather than the original?

Mr. Hawkins: I thought she testified that was a copy, rather than the original.

The Court: I think that's right. I just wanted to know if there was any objection on that ground.

Mr. Hawkins: I have no objection on the ground it is a copy. I still don't think it's been properly identified. I don't recall that Mr. Stickney testified he prepared that original payroll.

Witness: It is in his handwriting.

Mr. Holman: Yes, she testified it is in his handwriting.

The Court: Well, I'll overrule the objection and admit it in evidence. As I recall, Mr. Stickney testified as to the men that had been furnished to him, or the labor that had been furnished to him in connection with the prosecution of this work, and the tenor of his testimony was that it wasn't adequate. If this is a payroll prepared by him, or at least in his handwriting, during the period, I think it would be material, and the objection will be overruled. [2027]

(Whereupon, defendant Macri's Exhibit No. 15-a for identification was admitted in evidence.)

Mr. Holman: Will you stand aside, Miss Callahan?

(Whereupon, the witness Elizabeth Callahan

was temporarily excused from the witness stand.)

Mr. Holman: I would like now, your Honor, to make application that the respective exhibits attached to the Nelson deposition be admitted in evidence.

The Court: None of them have been admitted so far, have they?

The Clerk: No, sir. Are you going to take them up separately?

The Court: I suppose we should. Of course, there is a question that I presume will be in a way common to all of them, as to whether these letters are admissible, and we may as well; aside from the hearsay in some of the contents, I think Mr. Olson raises the general objection to at least the ones not directed to or called to the attention of Mr. Schaefer, that they are not admissible.

The Clerk: The letter that was marked as "A" to the deposition is now marked Macri's Identification 79.

(Whereupon, letter marked as "B" to Nelson deposition was marked defendant Macri's Exhibit No. 92 for identification. [2028])

(Whereupon, letter marked as "C" to Nelson deposition was marked defendant Macri's exhibit No. 93 for identification.)

(Whereupon, letter marked as "D" to Nelson deposition was marked defendant Macri's exhibit No. 94 for identification.)

The Court: Are you making an offer of these, Mr. Holman?

Mr. Holman: Yes; I thought the Clerk was marking them serially through.

(Whereupon, letter marked as "E" to Nelson deposition was marked defendant Macri's Exhibit No. 95 for identification.

(Whereupon, letter marked as "F" to the Nelson deposition was marked defendant Macri's Exhibit No. 96 for identification.

(Whereupon, letter marked as "G" to Nelson deposition was marked defendant Macri's Exhibit No. 97 for identification.

(Argument to the Court on the admissibility of defendant Macri's Exhibits for Identification 79, 92, 93, 94, 95, 96, and 97.)

The Court: I don't think the letters are admissible. They're not written to Mr. Schaefer. They're simply letters written by an engineer of the Bureau of Reclamation to one of the parties in this case. There are direct ways in which it can be proven that the work wasn't performed [2029] on time. Mr. Nelson could have testified to that; his deposition was taken; you could have asked him what the progress of the work was. If that's the purpose of these letters it doesn't seem to me they are proper or material, and the objection will be sustained.

(Whereupon, defendant Macri's Exhibits No. 79, 92, 93, 94, 95, 96, and 97 for identification were rejected.)

Mr. Holman: Would the Court indulge me to the extent of fifteen minutes? Your Honor said

we would go until 4:30, and on account of this break with Miss Callahan, I just don't like to start in on something that is not constructive.

The Court: Well, one difficulty in this case has been that the last half hour of every day has been almost valueless, because we just didn't seem to make any progress during that time. I think we ought to progress the way a lawsuit is usually tried, put the witnesses on and examine them and be through with them. I must insist that after this you have your witnesses ready and be ready to proceed through the session of the Court. I'll adjourn now until 9:30 tomorrow morning.

Mr. Holman: May I do one thing before we leave? Mr. Olson has requested certain telephone calls. Miss Callahan has those, and will furnish them to you. Do you [2030] want to examine her on the stand about that?

Mr. Olson: I would like to take a look at them.

The Court: You might as well bring them out now.

Mr. Holman: May I state to your Honor that I called Mr. King, as I told your Honor I would, during the noon recess, and talked to him, and he said he would either have his doctor's certificate wired to the Clerk so it would be here tomorrow morning, or if the doctor thought he could instead come, that he would be here tomorrow morning. I explained the situation.

The Court: What was Mr. King's position with reference to this?

Mr. Holman: Your Honor, he had a definite period of supervision of the work.

The Court: Was he one of Mr. Macri's superintendents?

Mr. Holman: Yes, your Honor. Do you want Miss Callahan on the stand?

Mr. Olson: Wait until I see what we've got here.

Mr. Holman: Do you want the Court to remain?

Mr. Olson: Well, I think we can use this time.

The Court: All right.

ELIZABETH CALLAHAN

a witness called on behalf of the defendants Macri, resumed the stand and testified further as follows:

Cross-Examination

By Mr. Olson: [2031]

Q. Miss Callahan, showing you plaintiff's identification 98, is that a list of Mr. Macri's telephone numbers?

(Whereupon, list of Macri telephone numbers was marked plaintiff's Exhibit No. 98 for identification.)

A. Yes, it is, in Seattle.

Q. In Seattle for 1944? A. Yes.

Mr. Olson: We offer 98 in evidence.

Mr. Hawkins: We have no objection.

Mr. Holman: I have no objection, your Honor. I don't know the probative value of it, but I don't object.

(Testimony of Elizabeth Callahan.)

Mr. Olson: I can see where counsel would make that observation, and I'll state I have here in my hands—and I agree, your Honor, we're getting on something not too material, but Mr. Macri was very emphatic he was the one that called Mr. Schaefer on June 14. Now, I have in my hands Mr. Schaefer's long distance toll call for June 14, 1944, showing the numbers that were called, and I want to show what Macri's numbers are.

Mr. Holman: All right.

Mr. Olson: Now, the reason I'm asking for this was I want to see if they've got a long distance phone call for June 14 from Seattle to Mr. Schaefer. Maybe they have. [2032]

The Court: Well, suppose you check them up first, and just hold this identification. I'll reserve my ruling on the admissibility of it.

Mr. Olson: Well, I thought they had that one for June, 1944.

A. I understood you to ask me for all of them.

Q. (By Mr. Olson): No, June, 1944. That's the particular one I'm interested in, was June, 1944.

A. Well, of course, you see a phone call might be recorded in July.

Q. I think it would be.

A. Sometimes it depends on the time of the month.

Q. That's the one, at least, the one I have is a July statement, so I think yours should be a July statement covering June calls.

A. Would you like to hold those?

(Testimony of Elizabeth Callahan.)

Q. This is July right here, isn't it?

A. Yes, but there are many different phones, you see.

Mr. Hawkins: Your Honor, I wonder about the admissibility of any of this anyway. I suppose it is offered for the purpose of impeaching Mr. Macri as to who called whom. That's pretty clearly a collateral matter. After all, they admit they signed the contract. If they had 40 calls and didn't sign the contract, it would be immaterial to this lawsuit.

The Court: It would seem to me it would be too collateral for impeachment purposes.

Mr. Olson: Your Honor, that's the purpose of the—in other yords, Mr. Macri testified very positively that he called Mr. Schaefer on the phone, and I wanted to show that's not so.

Mr. Hawkins: This was before the contract was signed, however.

Mr. Olson: No, this was afterward, on June 14. June 15 they met on the ground, and Macri testified he called Schaefer and said "Why don't you get on the job," and arranged to meet on the field.

The Court: I see. You haven't the date here yet?

Mr. Olson: Yes, I think we have.

Q. (By Mr. Olson): You have the July statements covering the June long distance calls?

A. June and July.

Q. Well, now, see if you can find where you called to Portland.

A. What is the number in Portland?

(Testimony of Elizabeth Callahan.)

Q. Well, see if you can find any calls to Portland. A. Well, don't you know his number?

Q. No, I don't.

A. No, I mean Mr. Schaefer's number.

Mr. Hawkins: It's right in your hand. [2034]

Mr. Olson: Why should it be in my hand?

Mr. Hawkins: Isn't that a telephone bill of Schaefer's?

Q. The two numbers, home phone is East 4754, and the office is Lancaster 4181. Mr. Schaefer's home is East 4754.

A. Yes, these calls to Portland here; a call on June 22; would that be the one?

Q. June 14 would be the one.

Mr. Hawkins: Not only is this collateral, your Honor, but also the evidence, if any, will be based upon the telephone company's bill, which is not competent evidence of the calls. He might have used another telephone in somebody else's office.

The Court: Suppose you look for those over the adjournment period, and see if you can find them. The Court will adjourn until tomorrow morning at 9:30. Counsel should take note of the hour; it is 9:30 instead of 10 in the morning.

(Whereupon, the Court took a recess in this cause until Tuesday, March 18, 1947, at 9:30 o'clock a.m.)

Yakima, Washington, Tuesday, March 18, 1947,
9:30 o'Clock A.M.

(All parties present as before, and the trial was resumed.)

Mr. Holman: Your Honor, the Clerk hands me this [2035] telegram addressed to him: "It is now unsafe for Mr. S. R. King to make an extended trip. He has recently had the cast removed from his arm, and there is danger of re-traumatization. Dr. West." I would like to file that telegram, and I would like to file Mr. King's prior telegram.

The Court: All right.

Mr. Holman: Call Mr. Ashley to the stand.

VERNE E. ASHLEY

called as a witness on behalf of the defendants Macri, being first duly sworn, testified as follows:

Direct Examination

By Mr. Holman:

Q. Your name, please, and your place of residence? A. Verne E. Ashley.

Q. Where do you reside? A. I beg pardon.

Q. Where do you live?

A. Coeur d'Alene, Idaho.

Q. Mr. Ashley, what is your profession?

A. Civil engineer.

Q. Will you state your qualifications and experience, please?

A. Well, my education consisted of three and a

(Testimony of Verne E. Ashley.)

half years in college engineering work. I started in the engineering practice in 1921. I have the state professional license of the State of Idaho, by examination in 1938. I've worked for the State Highway Department of the State of [2036] Idaho, the United States Engineers, Seattle District, and at the present time I have my own business.

Q. Located where?

A. Located in Coeur d'Alene, Idaho.

Q. Now, were you employed on the Roza Project, on specification 1062, schedule 1? A. I was.

Q. When were you there, and for how long a time were you there?

A. The approximate dates would be June 18, 1944, to August 15, 1944.

Q. And for part of that time were you and Mr. Staples there together, or not? A. We were.

Q. For about long, do you remember?

A. Oh, roughly a week or ten days.

Q. A week or ten days, yes, sir.

The Court: I didn't get the last date, in August.

A. August 15.

Q. I'll ask you whether or not at the time you came on to the work the crew of the Concrete Construction Company was on the job or working?

A. Well, I believe they had possibly one or two men on the job at that time.

Q. Do you remember who they were? [2037]

A. Well, I wouldn't know their designation by payroll, but they were working in the lumber yard on forms.

(Testimony of Verne E. Ashley.)

Q. And I'll ask you whether or not you had any conference on the job with Mr. Nelson with respect to progress of the job about that time?

A. Yes.

Q. Did you communicate that conference, the result of that conference with Mr. Nelson, to Mr. Macri?

A. I did.

Q. Will you tell me whether or not you communicated the results of that conference to Mr. Schaefer?

A. I did.

Q. How did you communicate with Mr. Schaefer?

A. By 'phone.

Q. By telephone?

A. By telephone.

Q. From where, do you remember?

A. From the Sunnyside office.

Q. And do you recall the approximate time?

A. Well, it was within a very few days after I got on the job. I would say approximately the 20th or 21st or 22nd of June.

Q. Now, in that communication to—M. C. Schaefer is the one I'm talking about; is that the one you're talking about? [2038]

A. M. C. Schaefer is correct.

Q. In that communication with him will you tell the Court the substance of what you told him?

A. That we considered we had sufficient structures excavated ahead for them to place the forms and get started on the concrete work. Mr. Nelson had been on the job I believe the same day and had asked me what was the delay in getting the form work going, and of course ultimately place the con-

(Testimony of Verne E. Ashley.)

crete, so I called Mr. Schaefer to that effect, and the fact that we had sufficient holes excavated ahead ready for the placing of forms.

Q. Can you recall the approximate number of holes that were ready for placing forms before Mr. Staples left, while you were there?

A. Oh, we roughly checked through, and as I recall it was around 150 holes that he had excavated and fine graded.

Q. What, if any, statement did Mr. Schaefer make to you, if you recall; that is, in that telephone call?

A. Well, Mr. Schaefer was very anxious to make sure that there were sufficient holes or excavations made so that they could move in immediately and start to work and continue their operation.

Q. Now, did you then see Mr. Schaefer on the job?

A. Oh, yes, Mr. Schaefer was on the job.

Q. And were you present at a meeting in the—you said you [2039] came about June 18, did you?

A. Approximately June 18, yes.

Q. Do you remember whether or not you made any inspection of excavations as to any holes that had been complained of, or structure excavations that had been complained of by Mr. Schaefer or his superintendent? By the way, who was the superintendent when you first went on there? Who was the first superintendent you saw?

(Testimony of Verne E. Ashley.)

A. I believe Mr. Waltie, I believe, came first, and then Mr. Darcy, or it may have been just the opposite. I don't recall exactly.

Q. Well, was there any complaint made to you by either Mr. Waltie or Mr. Darcy as to holes, or was there complaint made by Mr. Schaefer?

A. There was discussion, soon after the men arrived, that is, Mr. Schaefer's organization, there was discussion as to the fact that they had been having some trouble with certain excavations, and we went back out and checked through a good many of them.

Q. Can you tell me approximately the time of their arrival with respect to July 4, whether it was around that time?

A. Well, actually, I would say it was probably July 5 or 6. One or two, I wouldn't say whether it was Mr. Waltie or Mr. Darcy, came in July previous to the 4th of July, and then some men came in on the 5th or 6th of July. [2040]

Q. Now, after they arrived, about how large a crew was there then, if you recall, I mean at that time?

A. Oh, around from eight to ten men.

Q. And of that do you recall approximately how many were carpenters?

A. Probably five. Five or six.

Q. Did you make any check of the holes after these men arrived? A. I did.

Q. About how many did you inspect and what condition did you find them in? When I say holes, I'm talking about the excavations for structures.

(Testimony of Verne E. Ashley.)

A. Well, first of all, I went through those that apparently there was some complaint regarding the holes, and attempted to check every hole, but then that wasn't necessary always. However, if there was any question about the hole, as to whether it was excavated sufficiently to place the forms, why, a check was made on the hole.

Q. Well, I'm interested in whether or not you made any check as the result of the indications by any of the Schaefer crew; did you do that?

A. I don't understand your question.

Q. I'm interested in whether or not you made any check of any designated holes by reason of the complaint of any of the Schaefer crew after they got there. [2041]

A. Yes, I did.

Q. And what did you find with respect to those, as to whether they were right or needed work, or what?

A. There were a few holes that were not right.

Q. Do you remember about how many you found?

A. Oh, possibly half a dozen.

Q. And will you tell me whether or not those were corrected by you?

A. They were.

Q. What, if any, instruction did you have with respect to securing lists of lumber from the Schaefer crew when they returned?

Mr. Olson: Is this from Mr. Macri?

Mr. Holman: Yes, but the instruction, I'm not quoting it.

Mr. Olson: I object, your Honor, to relating instructions given by Mr. Macri.

(Testimony of Verne E. Ashley.)

The Court: With reference to lumber, is that?

Mr. Holman: Yes, your Honor. This is a new engineer on the job. I want to know whether or not he had instructions with respect to lumber.

The Court: He can say whether or not he had instructions. I think the material thing is what he did.

Q. (By Mr. Holman): Did you have instructions, Mr. Ashley? [2042] A. I did.

Q. Will you tell me whether or not those instructions included securing the lists of lumber?

Mr. Olson: If your Honor please, that's going into the contents of what the instructions were again. He asks did they include this or that.

The Court: I think the material thing is what was done here, what he attempted to do.

Q. (By Mr. Holman): Very well. Will you tell me what you did with respect to grasping the situation as to lumber? What did you do with respect to the job and with respect to the Schaefer crew?

A. There was considerable discussion on the lumber situation.

Q. Between whom?

A. Between Mr. Schaefer's representative on the job, and myself.

Q. Who was that?

A. In most cases Mr. Darcy, and I asked him to submit to me a list of the lumber that they were going to need to complete the job.

Q. Was that done?

(Testimony of Verne E. Ashley.)

A. There was never a list given me as representative of the total amount of lumber required to complete the form building.

Q. Will you tell me whether or not there were any oral requests made for lumber, as emergent matters? [2043]

A. There were several. Of course, lumber was a critical situation at the time, and we attempted to watch it as closely as possible and keep on hand sufficient lumber to keep his carpenters going.

Mr. Olson: I move that answer be stricken, your Honor, as not being responsive.

The Court: I'll deny the motion.

Q. Will you continue, Mr. Ashley?

A. I recall on instances Mr. Darcy would come and tell me that they would be out of two by fours.

Q. What did you do then?

A. One particular time, especially, he told me, it was just after quitting time or just at the beginning of the following day, we pulled the crew in and went into Sunnyside, the retail yard, and got what we could in the way of two by fours. That occurred all the way through the month of July. There were several instances where we went in to the retail yard at Sunnyside and purchased two by fours and whatever we could get.

Q. When you say "pulled the crew in" whose crew was that?

A. That was our crew, out on the finishing of the structures. We would have two or three men, bring them in to the yard, get the truck, and go to town.

(Testimony of Verne E. Ashley.)

Q. Would it be the Concrete crew or the Macri crew? A. It would be the Macri crew. [2044]

Q. Handing you what has been marked identification 85, do you recognize that, Mr. Ashley?

A. I do.

Q. From what source did you secure the quantity of material as shown by that identification 85?

A. From Mr. Darcy.

Q. And for what purpose was that list of lumber furnished?

A. As it states here in the memo, "concrete chute and stilling pool."

Q. Now, at the time that list was furnished, was the stilling pool and chute ready for the placing of forms, or not? A. It was not.

Q. And was it in due course for performance at that time, or for later performance?

A. Well, for later performance.

Q. And what did you do with that?

A. Submitted it to Mr. Macri's office in Seattle.

Mr. Holman: I now offer in evidence, your Honor, Exhibit 85 for identification.

The Court: It will be admitted.

(Whereupon, defendant Macri's Exhibit No. 85 for identification was admitted in evidence.)

Q. Can you tell me whether or not at the time of presenting 85 Mr. Darcy asked for that for immediate delivery, or for a later delivery? [2045]

A. He was quite urgent about the delivery of this particular order.

(Testimony of Verne E. Ashley.)

Q. Did you have any conversation——

Mr. Olson: Let's let him finish, or was he through? Were you through, Mr. Ashley?

A. Yes.

Q. Did you have any conversation with him as to the character of that material called for by that bill, by that order?

A. What do you mean by the character of it?

Q. Well, the material of which it is made up; did you have any conversation with him about that, with Mr. Darcy?

A. I don't quite understand just what you mean.

Q. Do you recall the type of lumber that he asked for, for the stilling pool?

Mr. Olson: Now, your Honor, I submit that all counsel has to ask this witness is was there any conversation at the time this lumber was ordered, without suggesting to him what was said.

Mr. Holman: I'm not suggesting what was said, and I don't intend to suggest, and I would very much appreciate counsel, if he wants to object——

Mr. Olson: It doesn't do me any good to object after he's already told him what to say.

The Court: Just ask him about the conversation.

Q. (By Mr. Holman): Was there any conversation about that [2046] character of lumber at that time, if you recall it?

A. Well, the question of lumber, Mr. Darcy was asking for the best grade of lumber possible; now, that's the only reference I can make to it.

(Testimony of Verne E. Ashley.)

Q. You can't recall any specific conversation; I'll ask you whether or not at the time of sending that in you communicated currently with Mr. Macri in respect to that order? A. I did.

Q. When you came there can you tell me with respect to the Macri equipment? First the Laraine hoe; what do you know of that, Mr. Ashley?

A. Well, when I arrived on the job, the Laraine hoe was in the process of being overhauled. At the time I got there the tracks had been repaired, new pads put on, and then we continued that process of overhauling the Laraine by sending the motor in to Yakima, to the Yakima Iron Works, to be repaired, rebored, the clutch was overhauled, and there was considerable work; from the time that I arrived on the job there were two men working on the Laraine hoe in repair work all the time up until about the first of August.

Q. You say to about the first of August?

A. That's right.

Q. And can you tell me whether or not it was completed and [2047] ready for use before you left?

A. Yes, it was completed and ready to use. I had not taken it out in the field as yet, but it was ready to go out in the field.

Q. While that was undergoing process of repair was there any substitution for the Laraine hoe?

A. Yes, there was a rented hoe on the job.

Q. Remember the name of the owner of that hoe, or the type of hoe?

A. Well, Mr. Mullins was the owner.

(Testimony of Verne E. Ashley.)

Q. Do you remember the type of hoe?

A. Well, it was a half yard hoe.

Q. You don't remember the name of it?

A. No, I don't.

Q. Was that operating steadily, or not?

A. It was operating steadily; it was in very good mechanical shape.

Q. By the way, you wouldn't know where the Laraine came from except by hearsay, would you; you didn't know? A. No.

Q. And what with respect to any Caterpillar tractor?

A. There was a small Caterpillar on the job, which needed some repair work while it was there; the men worked on that and put it into shape. It was used for back filling. After it was repaired it was apparently in good condition. [2048]

Q. And what with respect to trucks? I'm speaking now of the Macri equipment.

A. Well, there was a ton and a half International truck that was in very good condition, on the job; there was a G.M.C. pickup that wasn't in too good a condition, it was receiving very rough usage, and it was very difficult to have any repair work done at that time without holding up the crews, and we were using the G.M.C. pickup to move the men around from one excavation to another, so it was in need of repair at most times. The reason it wasn't repaired was the fact that we just had to use it, and didn't take the time to get the repair work done. Then there was a Ford pickup sent to the job, which was in fair condition.

(Testimony of Verne E. Ashley.)

The Court: What was the capacity of the Laraine hoe; is that in the record?

Q. What was the Laraine capacity, Mr. Ashley?

A. A half yard.

Q. The same as the other one? A. Yes.

Q. Can you tell me whether or not at any time you supplied any men to the Concrete Construction Company crew for the purpose of doing any excavation work co-ordinated with form setting?

A. Yes, I did. [2049]

Q. Tell me what the circumstances were, please.

A. That was right at the beginning of the work at the time I was there. There were occasions when complaints were made regarding the excavation in the structure. In going back and looking at the structure to see just what the complaint might be, it was in most instances just a small amount of material to be moved, so I suggested to Mr. Darcy, "Well, we'll put a couple of our men, Macri's men, back on that part of the work to follow you along; in the event that there is a small amount of shovel work, that is, hand shoveling, to be done, why, we'll do it," and oh, that lasted for two or three days, and then Mr. Darcy came in and said the men were in his way, he'd rather not have them back there, so that's all that came of that procedure.

Q. Now, will you tell me whether or not you saw any evidence of difficulty in removing forms from the concrete structures after placement?

A. No, I can't say that I saw any extreme difficulty in removing the forms, and I noted, too, that

(Testimony of Verne E. Ashley.)

the forms, the concrete itself, showed no indication of it. As a rule, if you're having extreme difficulty in removing your form, why, the concrete is green, it will be chipped and it is very evident, but I saw nothing of that.

Q. Now, did you superintend the operation of the hoe in [2050] making excavations while you were there? A. I did.

Q. Will you explain to the Court how the hoe operated with respect to digging excavations and with respect to sloping excavations, if there was any slope?

A. Well, the action of a hoe in digging, of course, what we were primarily concerned about in excavating these was to endeavor to give sufficient room for the placing of forms, and when the hoe went into a structure or to a structure where the structure was staked out, the front part or back part we didn't have to worry about, because the natural operation of the hoe goes in such a way that you can't do anything else but slope it. Also the sides, the side walls that were excavated, in bringing the material out, throwing it over to one side, there was a continual knocking down of the burn, the top of the hole, which of course tended to give extra slope to the sides.

Q. I'll ask you whether or not there was any complaint made to you about the holes not being ready, by the Concrete Construction Company, while you were there? A. At what time?

Q. You were there while they were pouring, were you not? A. I was.

(Testimony of Verne E. Ashley.)

Q. While they were placing concrete?

A. Right at the beginning of the placing of the concrete. [2051]

Q. You were there? A. I was there.

Q. And during that time was there any complaint made to you as to the type of the excavations?

A. No, not at that time.

Q. And was there any notice of any kind given you that the excavations were not adequate for the placing of the forms?

A. You're still speaking of the period when they were placing concrete?

Q. While they were placing it, yes.

A. No.

Q. I'll ask you whether or not there was any number of holes called for by Mr. Darcy upon you while you were there, number of structure excavations?

A. Well, yes, there were. In fact, when I called Mr. Schaefer he said, "Well, we've got to be sure that we have 50 structures ready to place, that we can place the forms in; we want to place 50 structures before we start our concrete pouring, or placing of concrete," and of course Mr. Darcy mentioned that, too, when he came on the job.

Q. Well, now, did you notice the progress of the placing of concrete after the equipment started operating? A. I did.

Q. By the way, what was the type of equipment that was being [2052] worked by the Concrete Construction Company while you were there?

(Testimony of Verne E. Ashley.)

A. Well, they were using—you mean for their concrete operation?

Q. Yes, sir. A. A Mixomobile.

Q. And at that time did it have a tower on it, or not; do you recall?

A. It had a tower on it during the time that I was there. They started removing the tower I believe the day or the day before, that I left the job.

Q. And did you observe their progress of pouring as to number of structures per day, or any basis? A. I did.

Q. What was the progress made from the commencement of pouring on or about July 31 to the time you left, on or about July 15—August 15, do you recall?

A. Well, I recall in reference to the placing of the 50 forms that their concrete placing began about the 1st of August. I left the 15th of August, and the 50th structure had been—concrete had been placed in the 50th structure at that time.

Q. Now, can you tell me whether or not during that interim period of approximately two weeks in there, there was any difficulty encountered by the Concrete Construction [2053] Company with respect to operating their equipment?

A. Yes, there was; they had considerable difficulty with the Mixomobile.

Q. And could you estimate the approximate portion of the time, of those two weeks, approximately, August 1 to August 15, the equipment was not operating in placing concrete?

(Testimony of Verne E. Ashley.)

A. Well, they were down considerable; I couldn't give the days, I don't recall the exact number of days.

Q. You can't tell me the number of days? All right, sir. Can you tell me whether or not there was an adequate carpenter crew on the job to construct panels for the placing of forms ahead of the pouring of concrete under the schedule of 50 structures in advance, as fixed by Mr. Schaefer?

A. Well, at the time that these operations were supposed to start, that was approximately July 5, I had called Mr. Schaefer around the 20th or 21st of June; there was no placing of concrete until approximately the first of August, which seemed like a long time for anyone that was anxious to get under way.

Mr. Olson: I ask that answer be stricken as not being remotely responsive to the question.

The Court: It will be stricken, the last part of the answer will be stricken, his observation "it seemed [2054] like a long time."

Mr. Holman: Yes, I don't object to that being stricken.

Witness: And I talked to Mr. Darcy about the number of carpenters and the number of forms that were being placed during that time, with the idea that that work should be speeded up.

Q. Well, what with respect to the adequacy, as to sufficient number of carpenters, in your opinion?

A. In my opinion there weren't enough at that time.

Mr. Holman: You may inquire.

(Testimony of Verne E. Ashley.)

Cross-Examination

By Mr. Olson:

Q. Mr. Ashley, when you came on the job on June 18, 1944, how many structure excavations were there then excavated?

A. Do you mean completed excavations?

Q. Yes.

A. Approximately 150; I didn't go out and count them.

Q. And by completed you mean what?

A. I mean fine graded.

Q. Were the curtain walls excavated in those 150 excavations?

A. In most cases.

Q. Did you check them to see that?

A. Well, those that we had occasion to check I did.

Q. Well, isn't it a fact, Mr. Ashley, that your men never excavated any curtain walls on any part of that job? [2055]

A. I don't remember anything like that.

Q. Pardon?

A. I don't recall that.

Q. How about the fillets, were they excavated?

A. Yes, they were.

Q. Isn't it also a fact that your men never excavated any of the fillets on this job?

A. Well, for what period of time are you speaking, now?

Q. I'm speaking right from the beginning of the first structure right through to the very last struc-

(Testimony of Verne E. Ashley.)

ture, and asking you with reference to the period of time that you were on the job.

A. To the best of my knowledge they were.

The Court: I know what the curtain walls, are, I think, but what are the fillets?

Mr. Olson: Well, the fillets, as I remember the testimony, your Honor, are these little sides on the corner here, 25-g, 25-e, and 25-f.

Q. (By Mr. Olson): How many of these 150 holes did you check, Mr. Ashley?

A. I don't recall the exact number that I checked.

Q. And what did you do to check them?

A. Measured them.

Q. What all did you measure?

A. Well, first of all, the alignment of the hole and the [2056] elevation of the hole. Of course, each structure had more than one elevation, that is, each hole consisted of maybe two or three structures, which would be of various elevations, and we checked those elevations.

Q. In other words, you checked it to see that the elevation was to the right elevation?

A. That is correct.

Q. And did you check the vertical walls against which concrete was to be poured, to see if they were in line?

A. I did.

Q. And you checked the curtain walls?

A. I did.

Q. Checked the fillets, did you?

A. Yes, sir.

(Testimony of Verne E. Ashley.)

Q. What did you have with you when you checked those?

A. Well, at the beginning of the job, while Mr. Staples was there, Mr. Staples and I did it, and later on in the job——

Q. I didn't say who, I said what did you have with you; did you have anything with you to check them?

A. Well, will you explain what you mean?

Q. Well, did you have any plans?

A. Surely.

Q. What did you have?

A. We had the detail plan sheets.

Q. All right, and how much time did you spend checking these [2057] 150?

A. Oh, I wouldn't be able to even guess at that.

Q. Spend 30 minutes? You think you spent that much time?

A. I wouldn't be able to guess.

Q. Couldn't say whether you spent that much time or not?

A. I spent sufficient time that I——

Q. I say, you couldn't say whether you spent that much time or not?

Mr. Holman: I think he has a right to answer the question.

Mr. Olson: He hasn't a right to give conclusions.

The Court: I think he can say how much time he spent, or that he doesn't know. I think that would answer the question.

A. I don't know.

(Testimony of Verne E. Ashley.)

Q. All right. Mr. Stickney followed immediately after you, did he not, Mr. Ashley?

A. That's right.

Q. And when you left there was about 50 structures that had concrete poured in them?

A. Approximately, yes.

Q. And by that term you're using "structures" advisedly, and you do not mean 50 different excavations; you mean 50 structures?

A. Correct. [2058]

Q. You don't know how many different excavations that was, do you?

A. No, I don't recall.

Q. And were there any more excavations that had forms in them when you left, other than these 50 that had been poured?

A. Oh, yes, there were; I wouldn't recall just how many forms were ahead at that time, but they were placing forms ahead.

Q. Is your memory clear enough, Mr. Ashley, on it to make any estimate at all?

A. No, it isn't.

Q. You don't remember that at all. Were you ever around the carpenters when they were putting in these forms?

A. Oh, at times, yes, I was around there.

Q. Would it be very often?

A. Not very often; I had our own work to do.

Q. Pardon?

A. I was busy on our own work; I didn't have too much time.

(Testimony of Verne E. Ashley.)

Q. You spent most of your time on up ahead?

A. That's correct.

Q. Would you say that you were around the carpenters as much as once or twice a week during the time you were there, when they were putting in forms?

A. Do you mean when they were placing forms?

Q. Yes.

A. Yes, I would say that it was once a week.

Q. You'd say that you were around the carpenters about once a week. Now, did you ever see them doing any digging? A. No, I didn't.

Q. You never saw the carpenters do any digging; isn't it a fact, Mr. Ashley, that the carpenters, each one of them, spent from four to eight man hours on each excavation doing the fine grading?

A. I never saw it myself.

Q. Never saw it? A. No.

Q. Never heard about it? You're shaking your head, no. A. No.

Q. Isn't it a fact, Mr. Ashley, that shortly after you got on the job and on or about the 29th of July, that you told Mr. Darcy to keep track of the excavation labor and time that his carpenters had to put in on these excavations, and that Mr. Macri would pay for it, but to turn it in at digging time, and not carpenter time?

A. I don't recall any conversation to that effect. The only thing there, in that connection, as I stated before, was the fact that I did put a couple of men back there with him.

(Testimony of Verne E. Ashley.)

Q. Would you say that you did not tell Mr. Darcy that? [2060]

A. I said I do not recall such conversation.

Q. I understand you to say you did not recall it. Now I want to know if you say that you did not say that?

A. I couldn't say that I did or didn't.

Q. You just have no recollection of that?

A. I have no recollection on that.

Q. Now, you did receive complaints, I take it, from Mr. Darcy about the excavations not being to proper grade, and with reference to the slope, and with reference to the alignment?

A. Right at the first, when Mr. Darcy came on the job, that is correct.

Q. And those complaints continued as long as you were on the job, didn't they?

A. No, they did not.

Q. Pardon? A. No.

Q. Then you say you sent some fine graders back? A. Correct.

Q. Who was in charge of the fine grading under you? A. A man by the name of Sheffield.

Q. Curtis Sheffield? A. Correct.

Q. And was he on there all the time that you were there?

A. Well, not all the time. He left previous to the time that [2061] I left.

Q. Well, he left just a few days after you came on, didn't he, Mr. Ashley?

(Testimony of Verne E. Ashley.)

A. No, he was there; I don't recall the date that he left, but it was probably around the first of August.

Q. Well, now, were you able to get anybody else to take charge of the fine grading after he left and up to the time you left? A. No, I was not.

Q. Pardon? A. No.

Q. So that from August 1 to August 15, then, you had no one in charge of fine grading?

A. During that particular period there was some repair work made on the hoe that was rented from Mr. Mullins, and I stayed out with the fine grade crew as much as possible and looked after that.

Q. During the time that you were there was the pipe laying going on, too?

A. Yes, the pipe laying was started just previous to the time that I left there.

Q. Was that being done by Macri and Company, or being sub-contracted?

A. That was being done by Macri and Company.

Q. By Macri and Company; and would the men that were doing [2062] that work be classified as laborers on your payroll? A. No.

Q. Pardon? A. No.

Q. Now, I hand you Macri's identification 15, Mr. Ashley, for the week ending June 28; now, that was the first week, I believe, that you were there, or approximately so? A. Approximately.

Q. Now, how many laborers do you show on the payroll there, altogether, for that week?

A. Five laborers.

(Testimony of Verne E. Ashley.)

Q. And do you show any pipe layers in addition to the five laborers? A. No.

Q. Do you show any fine graders in addition to those five laborers? A. No.

Q. Is it not a fact, then, Mr. Ashley, that those five laborers constituted both your fine grading crew and your pipe laying crew?

A. There was no pipe being laid at that time.

Q. I understood you to say that the pipe laying started before you came?

A. I said the pipe laying started just previous to the time I left the job. [2063]

Q. I misunderstood you. How long before you left did the pipe laying start?

A. I wouldn't be able to give you the exact date.

Q. Well, did it start two weeks before you left?

A. Should probably be shown there in the latter part of July; I'd say the last week in July.

Q. Now, how many—or just how did you work your fine grading crew, Mr. Ashley? Did you have them all working together, or did you have two sets of them?

A. That depended, of course, upon the number of men that we had on the job. It wasn't possible to work over two or three in a structure at one time. If there were five men, why, we'd be working in two or three structures.

Q. Well, did you have five men, any time, fine grading? I'll hand you your payroll.

(Testimony of Verne E. Ashley.)

A. Well, we just counted the laborers on that payroll, and that would be the only type of work they were doing at that time. That would be the best answer I could give you.

Q. Well, you counted four there——

A. I believe we counted five, the day that you showed me.

Q. Would you take a look at the week ending July 19, Mr. Ashley; that's the week ending July 19, July 13 to July 19; how many laborers do you show on that? A. On the date of July 19? [2064]

Q. No, the week ending that; for the whole week.

A. Four laborers.

Q. Four; and how many hours did they put in that week? A. Total?

Q. Yes. A. 88.

Q. So that that would be the equivalent of approximately two men working continuously for the week, then, wouldn't it? A. 40 hours a week.

Q. Two men and one day; so that assuming that they were all fine graders, your crew, fine grading crew, didn't stay around five men, did it?

A. No.

Q. Now, it's also a fact, is it not, Mr. Ashley, that you wouldn't have the same men from day to day doing this fine grading work?

A. Yes, they were pretty much the same personnel.

Q. Isn't it a fact that you had a large turn-over there on the men doing your fine grading?

A. No, not too much. There were about four or five men there that were on.

(Testimony of Verne E. Ashley.)

Q. And isn't it also a fact that Mr. Macri wouldn't, just didn't permit you to pay the wages to enable you to get the proper type of men that understood fine grading? [2065]

A. Well, you better explain that statement a little more.

Q. Well, didn't Mr. Macri tell you to keep the payroll down, not to pay too much money, and as a result of that, you were unable to get the right type of men to do your work?

A. Well, the pay was governed by the scale.

Q. Well, didn't Mr. Macri tell you that?

A. Would you just state exactly what you wanted?

The Court: Read the question.

(Whereupon, the reporter read the question beginning with the words "Well, didn't Mr. Macri tell you to keep the payroll down.")

A. I didn't have any conversation with Mr. Macri regarding the number of men or the amount to be paid.

Q. Now, you say when the Concrete Construction Company came back on the job after you called them and said you had enough structures ahead to go to work, that they came back with a crew of ten men?

A. It was approximately that. I don't remember the exact number.

Q. If the Schaefer payroll showed a different amount of men, you wouldn't say that their payroll was incorrect?

(Testimony of Verne E. Ashley.)

A. I would say that the payroll reflected the true number of men on the job.

Q. In other words, your figures in that regard are purely estimating, looking back over approximately, well, close [2066] to three years now?

A. That is correct.

Q. And how many of his men were carpenters is likewise purely an estimate? A. It is.

Q. Now, after the crew came back you say they did complain about the excavations being not right, and that you went back and found about a half a dozen of them wrong? A. That's correct.

Q. How do you fix it at that half a dozen? Is that again——

A. Well, that's again an estimate.

Q. You kept no track of the number that were found wrong? A. I have no record here.

Q. And you have no record of the number that the Concrete Construction Company carpenters themselves hand excavated to grade, have you?

A. I have no knowledge that they were——

Mr. Holman: Just a minute. Your Honor, I object to the question as based upon counsel's assumption that there were any. In other words, if he adds "if any," that's different, but I don't want the witness to admit in his answer that they did any.

The Court: Well, the question might be objectionable on that ground, unless it is implied "if any," in the question. [2067]

Mr. Olson: Of course, there's been plenty of testimony that there were.

(Testimony of Verne E. Ashley.)

Mr. Holman: A lot of testimony that there weren't, too, your Honor.

Mr. Olson: I haven't heard it.

Cross-Examination

(Continued)

By Mr. Olson:

Q. Mr. Ashley, what did you find about these half dozen or so that you went back—what did you find about them that was wrong?

A. Well, the main thing was the elevation.

Q. They were not to proper grade?

A. Were not to proper grade.

Q. How about the lateral clearance, were they excavated out from the foundation a foot out from the neat line of the concrete?

A. Oh, possibly that may have been one of the items that was wrong.

Q. Pardon?

A. That possibly could have been one of the items wrong in the ones we found that had to be corrected.

Q. Now, how about the banks? Did they slope to a one to one slope?

A. Your question is so general it would be pretty difficult to answer.

Q. I'm asking about the banks, the outside banks opposite [2068] that part of the structure where an intervening form would be placed between the concrete and the bank.

A. I understand that.

(Testimony of Verne E. Ashley.)

Q. Now, that bank, was it sloped to a one to one slope?

A. Are you referring to all structures, are you referring to one structure, or just what is your question?

Q. I'm referring to the ones that you examined.

A. You refer to the ones of this half dozen I mentioned that we had to correct?

Q. Yes, those or any of the others.

A. Far as a one to one slope is concerned, I wouldn't be able to make a statement that they were to a one to one slope or that they weren't; in other words, we had no intention or didn't pay any attention to this matter of going to a one to one slope; that's why I asked you to repeat the question. I didn't understand just what you——

Q. In other words, you never heard of this one to one slope?

A. I've heard of the one to one slope, yes, but when you're talking about excavating the structures, in the actual excavation, we weren't instructed, our specifications didn't call for a one to one slope.

Mr. Olson: I ask that that be stricken.

Mr. Holman: Oh, I submit it is responsive.

The Court: As to what the specifications called for, will be stricken. [2069]

Q. (By Mr. Olson): You made no effort to excavate the banks to a one to one slope?

A. That's correct.

Q. Did you have anything to do with staking out any of the structure excavations for excavation by the hoe?

A. I did.

(Testimony of Verne E. Ashley.)

Q. And how much lateral clearance did you stake out?

A. Well, we figured, that is, in placing the stakes and instructions to the operators, to allow a foot at the base of the structure, and then side slope, I'm speaking of the two sides, not the ends that the hoe operated in, because the hoe itself took care of that.

Mr. Olson: I ask that all be stricken. I asked what he staked out. I didn't ask about the instructions, or what the hoe knocked off.

The Court: I'll permit it to stand. He's explaining why he staked a certain way.

Q. (By Mr. Olson): Now, answer my question, Mr. Ashley. How did you stake them out? Where did you place the stakes with reference to the structures?

A. I placed the stakes a foot out from the corners of the structures.

Q. Yes; in other words, when you went out and staked, you staked the excavations, that is, the sides of the excavations, you placed the stakes on the surface of the ground [2070] one foot from the neat line of the concrete?

A. Neat line, that's correct.

Q. And isn't it a fact, Mr. Ashley, that after these excavations were made by the hoe in a good many instances those stakes were still standing there on the ground?

A. Not at the point they were placed when the structure was staked out.

(Testimony of Verne E. Ashley.)

Q. Somebody moved them?

A. That is correct. That was the oiler's job, to offset them, because he knew how many feet he was offsetting them.

Q. The stakes were still sticking in the ground?

A. They were still sticking in the ground, but not in the place they had originally been placed.

Q. Now, you say Mr. Darcy never did give you a list of the total amount of lumber needed to finish the job?

A. Not a list marked or indicated as a total for the complete job.

Q. He gave you numerous orders for lumber, though?

A. He gave me verbal, several instances during the month of July, for just two by fours and such, which were immediately filled. He gave me one, as I recall, one written order which covered this stilling pool and chute.

Q. That was in July?

A. That was the latter part of July or the first of August. [2071]

Q. And he urged you to get that stilling pool lumber then?

A. He wanted to place an order because lumber was difficult to get at that time.

Q. And he told you he wanted the lumber?

A. Surely.

Q. Pardon? A. Yes, sir.

(Testimony of Verne E. Ashley.)

Q. Now, there was orders for lumber at the yard all the time, were there not, by Mr. Darcy and the Concrete Construction Company?

A. Written orders?

Q. Well, there were standing written and verbal orders? A. No.

Q. How many times did you run out of two by fours while you were there?

A. I didn't recall that we ran out of two by fours. I recall specifically one instance where Mr. Darcy said they would be out by noon if we didn't have them on the job. I went down, or I sent down, to the retail yard and picked them up.

Q. Do you recall any instances where the yard was completely out of any type of lumber?

A. No, I don't recall that.

Q. Would you say that that was not a fact, that they were completely out of some type of lumber? While you were [2072] there, that is?

A. I don't recall that they were completely out of any type of lumber at any time while I was there.

Q. Couldn't say they were or not?

A. The only answer I could give to that is to say I do not recall.

Q. Do you have the list of lumber that Mr. Darcy gave you—any of them?

A. There's one list as a matter of record. That is the only written list that I had from Mr. Darcy.

Q. This list that Mr. Holman showed you, that was a list that you made up and sent in to Mr. Macri, was it not?

(Testimony of Verne E. Ashley.)

A. That list was given to me by Mr. Darcy. That covered the materials in the stilling pool and chute. He gave it to me on a piece of paper. I typed it off on a memo sheet and sent it in to the office.

Q. In other words, the document that was shown you in Court is not the one that Mr. Darcy typed up? Your answer is no? A. No.

Q. It's one that you typed up?

A. That is correct.

Q. Now, you say that there was no complaints made to you about the excavations while they were pouring concrete. Now, by that you mean that the concrete crew made no [2073] complaints to you, is that what you mean?

A. I mean during that period of time.

Q. Well, you seemed to make some point when Mr. Holman was questioning you about it, whether he was confining it to that period of time, Mr. Ashley, and I just wanted to inquire what you meant by it. A. I meant during that period of time.

Q. What period of time was that?

A. From the latter part of July to the middle of August.

Q. So during that two week period you don't recall anybody complaining to you about the excavations? A. No, I don't recall any.

Q. The complaints had all come in prior to that time?

A. The complaints on the excavations were made within the first two weeks that the Concrete Construction Company came back on the job.

(Testimony of Verne E. Ashley.)

Q. Well, you didn't see the Concrete Construction Company crew much after that, did you, Mr. Ashley?

A. What do you mean by crew?

Q. Well, any of the men, or Mr. Darcy?

A. Oh, every day we'd see each other.

Q. Now, you say that the Concrete Construction Company equipment was down considerable. What do you mean by that?

A. Well, it wasn't producing, or in the active placing of concrete. [2074]

Q. So by the use of that word you mean that it was not in operation?

A. It was not in operation, that's correct.

Mr. Olson: That's all.

Redirect Examination

By Mr. Holman:

Q. When counsel asked you with respect to one to one slope, what in practice is the function of a one to one slope on this job?

A. The function of a one to one slope, or that is, a reference to a one to one slope, is simply to limit the pay quantity as far as the owner is concerned. It has no reference to a direction or specification as to what has to be done. It just simply relates to the liability of the owner.

Mr. Olson: Now, your Honor please, I ask that that be stricken. It certainly is not responsive to the question. It is obvious that's not the function of a one to one slope, to limit the pay quantity.

(Testimony of Verne E. Ashley.)

The Court: Well, it isn't strictly responsive, perhaps, but I think as an expert engineer he may express an opinion.

Q. (By Mr. Holman): That's what I'm asking, as the function of a one to one slope. Now, at any time that you were on that work did you receive any directions of any nature from the Bureau of Reclamation to cut the banks for concrete [2075] structures at any fixed slope?

A. I did not.

Q. And what was the character of the soil with respect to its ability to stand? Do you remember the character of the soil?

A. Well, the soil in my estimation would probably be classified as an A-4 soil, which is silt, and under certain conditions it will stand on a vertical slope. It requires considerable moisture to make it stand on that slope. It may, if moisture conditions are just right, on a new cut it may stand that way for a short time, until it's been exposed to the sun, and then it will cave off.

Q. Have you at my request recently inspected the site, Mr. Ashley? A. Yes, I have.

Q. And at that time were you able to see any newly disturbed soil? Did you see any soil disturbance? A. Oh, in plowed fields.

Q. You did. Counsel asked you as to an instruction by Mr. Maeri as to limit of men. Will you tell me whether or not you had any limitation as to the number or the type of men you employed while you were there?

(Testimony of Verne E. Ashley.)

A. No, Macri did not place any restriction as far as I was concerned. [2076]

Q. Now, did you have any limitation as to the purchasing of lumber?

A. The only limitation that I know of was the availability of it.

Q. But I mean, so far as instructions of Mr. Macri is concerned, was any limit placed?

A. No.

Q. Did you have any positive instructions with respect to purchasing lumber?

A. There was a conversation with Mr. Macri regarding lumber, that I told him that we could go down to the retail yard and get a small quantity, but that's all that was available down there, and he said that if and when we got a completed list of lumber, to forward it in to the Seattle office.

Q. Were you given any authority to purchase locally, at all?

A. I assumed that authority, as superintendent of the job.

Q. Yes, sir; and will you tell me whether or not you had any limitation placed on you as to running the job, while you were there? A. I did not.

Q. Counsel asked you as to pipe. Referring you to Exhibit 70, Mr. Ashley, which has been testified as being a metal plug, can you tell me whether or not they used this while you were there, this type of plug? [2077] A. No.

Q. What was done with respect to the plugging for pipe in the building of forms?

A. They made up a wood plug.

(Testimony of Verne E. Ashley.)

Q. Well, will you explain to the Court what is the function of a plug, and its due relationship to the pipe?

A. Well, the concrete operation, that is, placing of concrete in the structure, and the pipe laying necessarily has to be co-ordinated to a certain extent, and it was getting late along in the job, and it was apparent that we were going to have to start the pipe laying previous to the—that is, it would catch up and pass the placing of concrete in the concrete structures; well, inasmuch as the structure was not in, of course, why, the pipe could not be put in the structure.

Mr. Olson: Your Honor, I think I don't mind this man assuming a little bit, but once he starts in he keeps on going about what was around and what was going to happen.

Mr. Holman: I have no objection to counsel objecting to some question, but I certainly object to his endeavoring to discipline the witness.

The Court: Well, he's complaining about it, I assume. The answer wasn't entirely responsive. You can interrogate him if you wish. [2079]

Q. (By Mr. Holman): Let's take this 26——

Mr. Olson: I object to this as not being proper redirect.

The Court: It isn't proper redirect. If you wish to re-open your direct, you may do so, but the mere mention of pipe in the cross does not make it proper. I think we may as well recess for five minutes, if this is going on for some time.

(Short recess.)

(Testimony of Verne E. Ashley.)

(All parties present as before, and the trial was resumed.)

Mr. Holman: Your Honor, I decided not to go into the pipe question.

The Court: Oh, all right.

Mr. Holman: That's all, your Honor.

Mr. Olson: I have a couple of questions, unless counsel is going to examine.

Mr. Hawkins: I have no questions.

The Court: I might say when you have a witness here like this witness, and have something you overlooked, and wish to re-open direct, I have no objection to that.

Mr. Holman: I understand that.

The Court: I'm not trying to cut you off.

Mr. Holman: No; it's a collateral issue. [2079]

Recross-Examination

By Mr. Olson:

Q. Do you remember talking to Mr. Matt Schaefer and Mr. Darcy in Coeur d'Alene, Idaho, on or about October 26, 1946? A. Approximately.

Mr. Holman: Just a minute. Objected to as not proper cross-examination. If it is for the purpose of impeaching the witness, I have no objection, but otherwise it is not proper cross.

The Court: It is not proper cross, but——

Witness: I recall that.

Q. I will ask you if you did not in the course of that conversation state to Mr. Schaefer and Mr.

(Testimony of Verne E. Ashley.)

Darcy in substance as follows: That you had requested Mr. Staples to stay on the job, because it was a two man job, and that you'd both run it, and Mr. Staples said it was all right if you could put it over with Mr. Macri, and that Mr. Macri had then called you later and wanted to know why Mr. Staples was still on the payroll, and that you said because you had not learned all you needed to learn about the job to be able to run it alone, and needed Staples, and Mr. Macri said to you "You better learn quick, because Staples has to get off the job."

Did you say that? A. I did not say that.

Q. Did you not say this in substance: That you could have [2080] obtained plenty of skilled men for all the work, but that Macri would not pay the wages?

A. I did not say that.

Q. I'll ask you further if you did not at the same time, to Mr. Darcy and Mr. Schaefer, say in substance that your blow-up with Macri came because of Macri refusing to pay enough for good help, lack of lumber, no effort to send any in, and Mr. Macri forcing the laying off of help, the lack of adequate equipment, and the refusal of Mr. Macri to supply any more; you did not say that?

A. Not those words.

Q. Or in substance? A. Or in substance.

Mr. Olson: That's all.

Redirect Examination

By Mr. Holman:

Q. Did Mr. Darcy and Mr. Schaefer solicit a statement from you, signed, at that time, Mr. Ashley?

A. They did.

(Testimony of Verne E. Ashley.)

Q. And what did you tell them?

A. I told them that first of all I was very busy and I didn't want to take any more time than possible, and also the fact that practically three years had elapsed, there was a lot of things that I didn't recall, and that I couldn't sit down and give anybody a statement right at that time, off-hand, so the meeting or the visit was [2081] concluded by Mr. Schaefer asking me if I saw fit, after thinking it over and going over what information I could recall, if I could give him a statement, if I would, and I said I would if I thought that I could give him a statement that would in any way help him or do anything for him.

Q. And you answered counsel as to this last question, he asked you, you did not say that in substance, or not those words. What did you say? Do you recall the substance of what you said?

A. Well, he's covered quite a series of conversation there. For instance, there was mention made about the fact that if Staples desired to stay on the job, that was perfectly all *right me*, and I thought it would work out very nicely because at that time I supposed we were going to be able to get the other hoe going immediately, and a pipelaying crew; there would have been sufficient work for the two of us; Mr. Staples complained of having been sick, and figured that it was the dust was getting the best of him out there, and he wanted to leave.

Q. Did you tell them that?

(Testimony of Verne E. Ashley.)

A. That was the substance of our conversation regarding Staples.

Q. What else did you tell them, if you remember?
A. That is about the only statement.

Q. Counsel used the words "blow-up with Macri"; did you have any statement as to that?

A. I don't recall any statement to that effect, because there was never any blow-up. Maybe I don't know what the term you're referring to there means.

Mr. Holman: That's all.

Mr. Olson: That's all.

The Court: All right, you may be excused, then.

(Whereupon, there being no further questions, the witness was excused.)

TOLLIFF HANCE

called as a witness on behalf of the defendants Macri, being first duly sworn, testified as follows:

Direct Examination

By Mr. Holman:

Q. Will you please state your name and place of residence?

A. Tolliff Hance, and my residence is in Spokane.

Q. And have you had experience with the Bureau of Reclamation work?

A. I worked for the Bureau of Reclamation for about five years.

(Testimony of Tolliff Hance.)

Q. Will you state your qualifications, Mr. Hance, please?

A. Well, I have received a degree in electrical engineering in 1932, one in civil engineering in 1936, and during the intervening years between those two degrees I worked about a year and a half on surveying crews, and then in 1936, after I graduated, I went right from school to the [2083] Riverton Project of the Bureau of Reclamation in the Denver office, and down in the Tucumcari Project in New Mexico until July, 1941; then in 1941 I went to Cleveland to work for a consulting firm. I was there about a year and a half, and then I taught at Kansas State College in Manhattan, Kansas, for about a year and a half.

Q. What did you teach?

A. Teaching engineering subjects, basic engineering subjects and also some mathematics. Then I left Kansas State College in July of 1944, worked with Ryan Aircraft Company for about two years as a structure analyst, and I left Ryan in June, 1946, and came to Spokane. At present I have my own office in Spokane as a consulting engineer. I have been operating that now for about five months.

Q. How long, then, Mr. Hance, were you with the Bureau of Reclamation?

A. Well, that would be total time of about five years. I moved around somewhat in the Bureau, transferred to various departments.

Q. I'll ask you if at my direction you have inspected recently the site of 1062, schedule 1?

(Testimony of Tolliff Hance.)

A. Yes, on March 11, in the afternoon, I took a trip out on the project and generally looked over the project, made [2084] specific examination of several structures, and, oh, generally looked the type of structures over; I got out and actually measured up a few of them particularly. I looked at the type of structure and the soil conditions and so forth.

Q. And did you have an opportunity in that time to observe the character of the soil through which the excavations had been made?

A. Well, at least the——

Q. I say, did you, sir?

A. Yes, a portion of it.

Q. And will you tell me whether or not you had occasion to observe that soil in natural condition and that soil disturbed? A. Yes.

Q. How did you do that?

A. On the project there are several plowed fields, and that's a good instance of the disturbed soil, down to depth of about a foot, and then along the canal banks where the rain, apparently, or the water had washed away, the bank would be exposed for a depth of maybe a foot and a half or two feet in a few places.

Q. What is the type of soil around there, Mr. Hance?

A. Well, it is a silt. In fact, it's almost entirely silt. It is apparently a Loess glacial deposit. It contains [2085] very little clay and very little coarse material, at least the stuff I saw on the surface.

(Testimony of Tolliff Hance.)

Q. And do you know about its normal, its natural, angle of repose?

A. Well, glacial deposits don't have a definite angle of repose. In fact, definite angle of repose is only true of sand. In fact, other types of materials, they'll stand vertically a short distance, and then tend to cave off, depending upon the peculiar conditions of the moisture content of the soil and so forth.

Q. What is this general classification of soil?

A. Well, this is glacial deposit; it would tend to stand on short vertical slopes, that is, not very high, maybe a foot, foot and a half. Now, that's not a true vertical plane; that is, it doesn't—when freshly excavated, it would probably stand for a foot or a foot and a half, reasonable moisture content, on a practically vertical slope. On a dried condition or a disturbed condition it wouldn't stand on a vertical slope. I don't know exactly what the slope would be, but it would have to slope back some.

Q. Now, I'll ask you whether or not in your experience with the Bureau of Reclamation you had occasion to learn of the provisions of specification 47 in the specifications 1062, schedule 1. Did you at my request study these [2086] specifications which are shown by plaintiff's Exhibit 3, Mr. Hance?

A. Yes, sir, I read them over and studied some paragraphs in detail.

(Testimony of Tolliff Hance.)

Q. Will you turn to specification 47, and tell me whether or not that is a usual or unusual specification in Bureau——

A. You mean paragraph 47?

Q. Yes——

Mr. Olson: Now, your Honor, I don't see the materiality of whether or not paragraph 47 is a usual or unusual paragraph to be contained in specifications. It is there, and may be the only one that was ever issued by the Bureau, or might be the same one that's issued in every one. It has no materiality, as far as this case is concerned.

The Court: I suppose it is leading up to his interpretation of it. I'll overrule the objection.

Witness: Well, this particular paragraph is generally pretty common throughout all Bureau specifications that I've ever examined, particularly on lateral structures on distribution systems.

Q. Now, in your experience with the Bureau did you have occasion to estimate quantities of performance, to fix pay quantities? [2087]

A. Yes, the time you set up any job in the Bureau of Reclamation it's usually up to the field office to make an estimate of cost for the purpose of soliciting funds, and while we make recommendations on specific items, the Denver office then works out the details from our recommendations, and a great many of their paragraphs are pretty much standard, such as this one.

Q. And with respect to the portion of that specification providing for slopes one to one, will

(Testimony of Tolliff Hance.)

you tell the Court what is the practical use of that from the Bureau standpoint, for payment?

Mr. Olson: That's objected, your Honor; the specifications speak for themselves as to their contents.

The Court: Overruled.

A. The excavation slopes here in the specifications state that for purpose of payment it will be one to one for common excavation and one quarter to one for rock. In this type of specification where the contractor is expected to bid unit prices per yard for structure excavation, there must be some means of determining how much structure excavation there's going to be, in order to prepare bids, and also it limits the liability of the owner as to what he shall be obliged to pay for structure excavation. The actual slopes in here are put in for that purpose. [2088]

Q. And I'll ask you whether or not that has any applicability to the item of back fill?

A. Item of what?

Q. Back fill. A. Yes.

Q. How does that apply?

A. The amount of back fill is defined as excavation refill, which would be the amount of excavation outside of the structural lines, that had to be back-filled with material, and this would also limit the amount of back fill that the owner would be obliged to pay for, or in this case, the Bureau of Reclamation, under the item of back fill about structures.

(Testimony of Tolliff Hance.)

Q. Now, have you had occasion, Mr. Hance, to observe field performance for installation of reclamation projects such as this specification 1062, schedule 1, in your practice?

A. Yes, we've had, from the time I worked with the Bureau on the Riverton Project we had three contracts for lateral systems, and on the Tucumcari Project in New Mexico we put in some lateral structures with the W.P.A. forces.

Q. Did you at my request determine what would be the appropriate quantity of lumber required to service the pouring, the placing, of concrete in the structures on this job? [2089]

A. Yes, I made a rather—well, I made an estimate, rather a short estimate, based upon a few difficult structures. I did not go through all the structures, no.

Q. Were you able from that estimate to fix a maximum quantity of lumber that would be required for this performance?

A. Well, I was able to make an estimated quantity of the amount of lumber for the amount of concrete given in here, and as my estimate, estimating is not exact, from that I estimated 60 or 70 thousand.

Q. You determined a figure, did you?

A. Yes.

Q. What was your figure?

The Court: Just a minute, the witness hadn't finished his answer yet.

Q. I wanted to make it responsive, your Honor.

(Testimony of Tolliff Hance.)

The Court: All right, go ahead.

A. About 70,000 board feet.

Q. And how did you arrive at that, Mr. Hance?

A. Well, there are some, I believe the specifications called for about 1500 yards of concrete, that's item 12, about 1500 yards of concrete, and from examination of a few typical structures I estimated the square feet of form required to build those structures, and it takes about two and a quarter board feet of lumber to form one [2080] square foot one time, and then a reasonable re-use of forms I took to be about five times.

Q. What from your experience is a reasonable re-use of form panels?

A. Well, they can be re-used from, oh, from three to perhaps fifty times, depending upon the type of panel and the care with which it is made and how it is handled and so forth. Ordinarily on structures of this type, why, six to twelve times has been common practice as I've observed it. Where they're lined with plywood you can use forms a good many times, that is, by that, twelve or more times. Where they're not lined with plywood, why, three to six times, and then they have to be repaired. In repairing frequently all that is necessary to do is rip off the sheathing and replace it. It is not necessary to rebuild the entire form. I recently had a brochure from Universal Form Tie Company in which they put out a form which they claim can be used from fifty to 100 times.

(Testimony of Tolliff Hance.)

Q. Now, handing you what has been introduced in evidence as exhibit 44, are you familiar with that type of fastening? A. Yes, sir.

Q. And have you at my request inspected it, Mr. Hance?

A. Yes, I looked at it the other morning.

Q. Will you explain to the court, will you tell me first what this is known as—— [2091]

A. Well, it is a——

Q. I didn't finish my sentence—in form work?

A. It is used as a combination tie and spreader in concrete forms. It ties the forms together, and at the same time holds them the correct distance apart.

Q. Is it or is it not known as a she-bolt?

A. I've never heard that called a she-bolt.

Q. What is a she-bolt?

A. Well, a she-bolt is a bolt with one male and one female end, and one end has a thread which a nut can be screwed on, and the other end is hollow, and has a stud or thread which a bolt can be screwed into.

Q. Now, assuming that this 44 had been placed to hold a form near the base of a structure, can you demonstrate from this 44 the distance to which the outer portion of 44 would have to be extended in order to release that panel of the form?

A. Well, the form, the inside sheathing of the form, is butted against this face of the cone——

Q. Now, just a moment; could I have that marked 44, another sub-number?

(Testimony of Tolliff Hance.)

(Whereupon, a portion of Exhibit 44 was marked 44-b.)

Mr. Olson: Your Honor, it seems to me it is taking a lot of time to establish that thing. It is a matter [2092] of mathematical figuring out how far you've got to unscrew that bolt. It doesn't take a civil engineer to figure that out. I consider it wholly immaterial.

Mr. Holman: If counsel wants to make an objection——

The Court: Well, I'll consider it an objection to proceeding with this line of inquiry.

Q. (By Mr. Holman): Now, referring to the portion here which the clerk has marked 44-b, what is done with respect to that, will you show the Court?

A. Well, this is held in the concrete. After the concrete is poured, in order to remove the form you turn this rod here——

The Court: It isn't necessary to separately number all those parts.

A. ——the tail rod, you twist that you; you will have to hold this for me, and you unscrew that to the distance of its embedment in the cone nut, which would be about half way or probably one and a half inches. As soon as the tail rod comes out where it clears the form rod, then the cone may be removed.

Q. And what with respect to the other side?

A. Well, the same way, and also as soon as this tail rod is removed to the depth of its embedment,

(Testimony of Tolliff Hance.)

why, the form may be removed. The two cone nuts and the rod in between stay in the concrete. [2093]

Q. Now, would this be moved clear out?

A. No, just till it clears this cone nut. It would be a matter of unscrewing this maybe an inch or an inch and a half; slide it out until it just clears that. That embedment there was about an inch, in this case.

Q. Now, is that the total distance needed for operation of the arm marked 44-a, in removing a form, or not? A. Yes.

Q. I'll ask you whether or not you made any investigation under my direction as to the type of equipment used on this job, and its adaptability for performance of this job?

A. Well, I didn't actually see the equipment. I saw the pictures in the book that you showed me.

Q. And referring to 49-1 and 49-2 in plaintiff's Exhibit 49, with respect to the concrete placing equipment, that's what I'm asking you about.

A. Yes, the mixer here is the large mixer, that's 49-1, and 49-2 is a mobile buggy which transports a small portion of the batch to the form.

Q. Have you had occasion in your experience to see equipment in operation? A. Oh, yes.

Q. Will you state whether or not that equipment is practical equipment for the performance of this job? [2094] A. In my opinion is it not.

Q. Why?

A. It was too large and heavy for the amount of concrete involved in this particular job. If you

(Testimony of Tolliff Hance.)

have a mixer there, about a yard mixer, under proper operating conditions, that should work at an output rate of 15 to 30 cubic yards an hour, and with only 1500 yards involved, that would be a total of about 50 yards to 100 *yards* (hours) use, total use of the equipment on the job, and meanwhile, that is, if you either have to set up a job to use that equipment in from two to three weeks, and then get it off the job, or you have to have a lot of idle time for that equipment, and it's not practical to set up a job if your pour is so short, because it takes a large crew and it is hard to build up a large crew in that short period. Over a long period the cost of maintaining a large mixer, which is naturally relatively expensive on the job, would be more than the job would be worth.

Q. Now, it has been established here, Mr. Hance, that the elevator shown in 49-1 was later removed, and that pouring was done from the mixer as shown in 49-35 and 49-36. Would that change your answer?

A. Well, no, the fact that they've taken the tower off, you've still got a heavy, expensive piece of equipment [2095] for only 1500 yards of concrete.

Q. Will you tell me whether or not in the inspection you made in the field under my direction you found any evidences of Bureau tolerance with respect to completion of concrete structures?

A. Well, I measured several structures, and I found that wall thickness, as comparison with the

(Testimony of Tolliff Hance.)

plan, varied from a quarter of an inch less than that called for in the plan to three eighth inches more than required on the plan, rather frequently, and in one instance I measured one wall that was half an inch wider than the plan called for.

Q. Did you make any memo of the structures that you examined, Mr. Hance?

A. Yes, sir. Yes, I actually measured about 11 or 12 structures.

Q. Would you call those off, please?

A. They're the structures on lateral 59.3-A. I examined structures 33, 34, and 35 on 59.3; structures 36 and 37 on lateral 59.8; structures 43, 44 and 45, and on lateral 59.9, 47 and 48, and then I also examined the chute structure on the east turbine lateral.

Q. Would you give me the structures on 59.9 again, please?

A. 47 and 48.

Q. And what was the last? [2096]

A. The chute structure on the east turbine lateral. We looked at several others, but I didn't make a detailed examination, and therefore did not——

Q. By the way, when did you make the examination?

A. That was March 11, in the afternoon.

Q. And who was with you?

A. Mr. Ashley and Mr. Staples.

Q. Now, can you tell me whether or not in examining those structures you found any evidence

(Testimony of Tolliff Hance.)

of any forced prying of the panels from the form—form from the concrete structure?

A. Well, the concrete wasn't scored.

Q. It was what?

A. I say, the concrete was not scored; there was only one chip that we noticed on any structure. That was on the east turbine lateral, and that apparently had been done sometime after the concrete had been poured, because the concrete showed evidence of having been fairly set before that was knocked off. That may have been back fill operations.

Q. Can you tell me whether or not what you observed from these structures constitutes in field practice of the Bureau what is known as reasonable tolerance?

A. Well, the tolerance in the field is up to the individual inspector, and if this project was satisfactory, they [2097] accepted the structure, I would assume that they used a quarter to three-eighth inches as being satisfactory. There is no strict tolerance set up. It is up to the judgment of the individual inspector on the job.

Q. Is there a field tolerance recognized in inspection, or not?

A. Well, just what the—tolerances will vary a little bit with the particular type structure. On elevations in ditches where you're going to put the structure, the absolute elevation of the structure, if it is within a tenth it is probably close enough. The thickness of the walls in those structures would

(Testimony of Tolliff Hance.)

be held to much closer tolerance. A quarter of an inch in the walls the size of this structure would probably be considered adequate.

Q. Now, from the inspection in the field, can you tell me whether or not the type of structure called for performance here is unusual, or the usual type used in the Bureau of Reclamation for conveying of water for irrigation purposes?

A. In general, the type of structure is fairly common. At the time I worked with the Bureau our structures differed a little in detail from these, inasmuch as at that time we re-enforced every structure, and we used thinner walls than they did out here, but generally speaking the weir box is about the same shape, and [2098] culvert head walls and so forth.

Q. Did you at my request, Mr. Hance, determine a percentage of the various sizes of structures which are involved in the performance of specification 1062, schedule 1?

A. Yes, I went through 368 different structures, and determined the height from the invert elevation to the top of the head wall, and classified those into five groups.

Q. Do you have a tabulation of those?

A. Yes.

Q. Will you indicate to the Court what you did, and what you found?

A. Yes. I listed the structures by number, and through the plans that I had available I determined the height as I described; there were a few

(Testimony of Tolliff Hance.)

structures that were missing, and some were duplicated, but the duplication wasn't counted.

Q. How many did you total?

A. I got a total of 368, and I classified those as to the wall height, that's the interior wall height from the invert to the head wall.

Q. The invert means what?

A. The invert elevation is the top of the concrete slab, and the head wall, the elevation of the top of the head wall as applied to that particular structure. [2099]

Q. All right, sir.

A. First classification were those with a head wall height of one and a half feet to two and a half feet, and of the 368 structures I found 23, or 6.2 per cent, were in that class. In the two and a half feet to three and a half feet height, I found 152 structures, or 41.4 per cent; three and a half to four and a half, 101 structures, 27.5 per cent; four and a half to five and a half feet, there were 54 structures, or 14.6 per cent, and all structures that were greater than five and a half feet, there were 38, which totaled 10.3 per cent.

Q. Now, what over-all percentage of the structures you have just indicated would be accessible from the top of the structure for the purpose of removing the fastener shown by exhibit 44, at the base or near the base?

A. You mean on the outside wall?

Q. Yes, the outside.

(Testimony of Tolliff Hance.)

A. Well, it would a function of the cut, and since these structures usually stick up above the ground a foot to a foot and a half, it would make about 74 per cent that would have a wall height of less than four and a half feet, and therefore a depth of excavation of not in excess of probably three and a half.

Q. Mr. Hance, did you at my request compute what would be the cost of performing all of the excavations for specifications [2100] 1062, schedule 1, entirely by hand?

A. That's the structural excavation, common; I made an estimate of that cost at——

Mr. Olson: Just a minute.

Q. I asked you if you did it?

A. Yes, sir, I made an estimate.

Q. Will you give me the results of that computation, please?

A. I estimated the cost at about \$11,250.00.

Q. How did you arrive at that?

A. Based on taking one and a half labor hours to remove one yard of material, and based on 7500 yards, which was the final estimate quantity for structural excavation, common, and computed on the basis of a dollar an hour for labor.

Q. Now, in your computation did you determine as to the final estimate quantity of rock excavation?

A. Yes, in the final estimate that gave I believe 264 yards; it is a relatively small quantity, and of course rock would have to be shot first, and prices

(Testimony of Tolliff Hance.)

on that would vary from \$2.50 to \$4.00, would be a reasonable excavation price for that.

Q. Is that reflected in your excavation common?

A. No, that would be rock excavation. Rock quantity was so small that even at \$4.00 a yard it would only be slightly in excess of a thousand dollars. [2101]

Q. And referring to item 8 on the final estimate, 246.4 cubic yards, that would be at what per cubic yard?

A. Well, \$4.00 should be a reasonable price for removing that; that is, not in excess of that.

Mr. Holman: You may inquire.

Cross-Examination

By Mr. Olson:

Q. You were out on this project on March 11 of this year?

A. Yes, sir.

Q. And you said you examined a few structures; that's the ones that you enumerated by number?

A. Yes, I made a detailed examination of those, plus the west turbine lateral, I didn't put the number down of that—I think it is the east turbine lateral chute; I didn't put that number down.

Q. Now, the only examination that you made of the soil out there is that you saw the surface of the ground as you walked over it, and saw plowed fields?

A. And along the bank of the ditch in a few places you could see where it had washed, and of course I stopped and picked some up and felt of it to get an idea of what it was.

(Testimony of Tolliff Hance.)

Q. The bank of what ditch?

A. The Roza Canal.

Q. The main canal? A. Yes, sir. [2102]

Q. Of course, that bank had been entirely disturbed soil at one time, had it not?

A. Well, not at the places I have in mind. That is, obviously the slope was disturbed, and the portion of the bank was disturbed, but the places I was looking were where it was washed, where water had made little gullies down into the ditch, and cut down into the soil.

Q. The upper bank, or the lower bank?

A. No, that would be the upper bank.

Q. And the testimony you have given as to soil conditions is based on those three things, walking over the surface of the ground, seeing plowed fields, and a few places you saw where rain water had washed the upper bank?

A. That's right, and of course picking it up and examining it in my fingers.

Q. Now, the 70,000 board feet was the lumber you estimated it would take to furnish the forms for this job 1062?

A. Yes, something like that.

Q. What kind of lumber were you figuring, I mean in size?

A. Well, that's two by fours for studs, plates and sills.

Q. How many board feet of two by four did you figure?

(Testimony of Tolliff Hance.)

A. Well, I didn't segregate it that way. One square foot of form surface, to form one time, would require slightly over one board foot of three quarter inch material, and also a little over one board foot of two by four material [2103] for studs, plates and sills. It is based upon two-foot spacing of studs, and about——

Q. You started out, then, with a quantity of a cubic foot of concrete, did you?

A. No, square foot of concrete surface.

Q. Well, let's work on that, then. A square foot of concrete surface requires how many board feet of two by four? A. About 115/100.

Q. All right; what else would it require?

A. It required about 1.1 of three quarter inch sheathing.

Q. All right.

A. Now, that's just for the form itself. Now in addition to that you'll need whalers, or I believe they've been called strong-backs, but the amount of lumber for that I wouldn't allow, oh, over about a fourth of a foot per square foot, because those whalers can be used a good many times.

Q. That's a fourth of a foot of whalers?

A. That's right.

Q. Anything else that you determined for the forms; is that all?

A. No, that was chiefly the figures. There will be a few pieces of bracing, but those will be usually made up out of scraps, a lot of it can be used out of waste. [2104]

(Testimony of Tolliff Hance.)

Q. Figure any plywood or facing at all for the inside forms? A. No.

Q. You didn't compute anything for that?

A. No.

Q. They would be required, would they not?

A. Well, that's up to the man who's building the job, whether he wants to form them, line them with plywood or Masonite or not line them at all.

Q. I see; it would require some lining, would it not?

A. It wouldn't necessarily require it, no. I've seen them made without it. In fact, whole jobs done without any lining at all.

Q. Now, in figuring your 1.1 sheathing, I take it you mean the ship-lap? A. That's right.

Q. What grade of lumber did you consider in your figures?

A. Well, grade of lumber would determine the cost, but it wouldn't determine the amount.

Q. Well, supposing that you had a board foot of the type of lumber that I show you now, could you make forms for this job with this type of lumber that I'm now showing you, being part of the exhibit here in Court?

A. You couldn't without lining them, no.

Q. You would either have to line them or it would take a good deal more lumber than that, to cut out these knotholes? [2105]

A. Well, it would be virtually impossible to make a satisfactory form out of that, without lining it.

(Testimony of Tolliff Hance.)

Q. You think it would be virtually impossible to make forms out of this lumber, without lining it?

A. I would think so.

Q. In other words, this type of lumber would have to be cut out and thrown away, and use only the good portions of the lumber, or else line it?

A. That's right.

Q. So that on your figures, then, you're figuring lumber that's suitable for making forms?

A. Yes, because I'm not figuring any lining.

Q. Are you figuring when you figure a square foot of concrete, do you mean that it would take that much ship-lap on each side of the square foot?

A. Well, for each square foot of surface, that's right.

Q. How much square footage did you determine on this job, that required forms?

A. Oh, it ran about 120,000 square feet altogether.

Q. 120,000 square feet of contact area of the concrete?

A. That's right.

Q. And you figured that the lumber could be re-used, I think you said, the forms, approximately five times?

A. I would think so, if they were lined. [2106]

Q. Did you also figure that with reference to the stilling pool and the chute?

A. Well, no, the chute could be—that is, there is ample opportunity on that chute to use the same forms a good many times.